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TRUST INDENTURE

ASSOCIATED SIMMONS HARDWARE COMPANIES

TO

CONTINENTAL AND COMMERCIAL TRUST AND SAVINGS BANK,
TRUSTEE,

AND

FIRST NATIONAL BANK IN ST. LOUIS,
CO-TRUSTEE

DATED MAY 1, 1920

Securing an Issue of $10,000,000. of Five-Year 7% Secured Gold Notes of Associated Simmons Hardware Companies

TABLE OF CONTENTS*

OF

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CONTINENTAL AND COMMERCIAL TRUST AND SAVINGS BANK, TRUSTEE

AND

FIRST NATIONAL BANK IN ST. LOUIS, CO-TRUSTEE.

DATED MAY 1, 1920.

	Page
PARTIES (Promisors, Trustee and Co-Trustee)	1
RECITALS:	
Trust Agreement creating Associated Simmons Hardware Companies	1
Powers of Promisors to borrow money and issue notes	1
Authorization of notes and indenture by Promisors	2
Form of note	3
Form of interest coupon	7
Form of Trustee's certificate	8
Performance of requirements of law, etc	8
PLEDGING CLAUSES:	
Pledge of stocks, etc., to secure notes	8
Stocks of Controlled Companies (LIST I)	9
(1) Simmons Hardware Company (Missouri)	9
(2) Simmons Hardware Company (Pennsylvania)	9
(3) Simmons Hardware Company (Minnesota)	10
(4) The Morton-Simmons Hardware Company (Kansas)	10
(5) The Simmons Hardware Company (Ohio)	10
(6) Dymond-Simmons Hardware Company (Iowa)	10
(7) Simmons Hardware Company (New York)	11
(8) Simmons Hardware Company (Massachusetts)	11
(9) Simmons Warehouse Company (New Jersey)	11
(10) The Walden Knife Company (New York)	11
(11) Frye Phipps Co. (Massachusetts)	12
(12) Simmons Import & Export Corporation (New York)	12
(13) Universal Paint Company (Missouri)	12

*This table of contents and the marginal notes are not in the original trust indenture as executed, but are added hereto for conveniences.

(14) Stanwood Motor Car Company (Missouri) 12
(15) Hardware Distributors Company (New Jersey) 13
(16) Stock now owned or hereafter acquired of other Controlled Companies as herein defined 13
(17) Stocks, notes, etc., of Controlled Companies except notes evidencing current borrowings from the Promisors 13
Stocks other than Controlled Companies carried as investments by the Promisors (LIST II) 14
(1) Scruggs, Vandervoort, Barney Dry Goods Company (Missouri) 14
(2) Grant Leather Corporation (Virginia) 14
(3) Roanoke Spoke and Handle Company, Inc. (Virginia) 14
(4) Pacific Development Company (New York) 15
(5) Other stocks 15
Property hereafter pledged hereunder (LIST III) 15
Issues, profits and income of pledged securities (LIST IV) 16

HABENDUM 16
Assignment and pledge in trust 16
Trust estate 16

ARTICLE I.

ISSUE AND AUTHENTICATION OF NOTES.

Sec. 1. Designation of form, amount, denominations, maturity, rate of interest and places of payment of notes 17
Payment without deduction for taxes except Federal income taxes in excess of two per cent 18

Sec. 2. Execution of notes 18
Execution of interest coupons 19

Sec. 3. Authentication of notes by Trustee 19

Sec. 4. Delivery of $7,500,000 of authenticated notes by Trustee 20

Sec. 5. Provisions for authentication and delivery of $2,500,000 of additional notes 20

Sec. 6. Application of proceeds of notes 22

Sec. 7. Temporary notes 22

Sec. 8. Replacement of mutilated, destroyed or lost notes 23

Sec. 9. Registration of notes 24

ARTICLE II.

COVENANTS OF THE PROMISORS.

Sec. 1. (a) To pay principal and interest..... 25
(b) Tax refund under Pennsylvania laws..... 25
(c) To pay taxes, etc., on trust estate and all property, etc., of Promisors and Controlled Companies..... 26
(d) Not to create any prior lien on trust estate..... 27
(e) Not to extend payment of interest coupons, etc..... 27
(f) To keep proper records of accounts, etc..... 27
(g) As to ownership of trust estate and of right to pledge same hereunder 28
(h) To pledge additional stocks, etc., hereafter acquired, etc.... 28
(i) For further assurances..... 28
(j) To insure property..... 28
(k) To maintain corporate existence of Controlled Companies... 30
(l) To maintain plants, etc..... 30
(m) As to borrowing of money by Controlled Companies..... 30
Not to mortgage property..... 30
Exception 30
(n) As to maintenance of quick assets..... 31
Definition of quick assets..... 31
Definition of net debt..... 32
Definition of Controlled Companies..... 32
(o) Right of Controlled Companies to borrow from Promisors.. 32
(p) To maintain the trust creating Associated Simmons Hardware Companies 32
(q) Waiver of redemption, etc., laws..... 32
(r) To pay attorneys' fees..... 33
(s) Permission for mortgage of $500,000 of Grant Leather Corporation 33

Sec. 2. Covenants of indenture for benefit of parties hereto and note holders 33

ARTICLE III.

CONCERNING THE PLEDGED SECURITIES.

Sec. 1. Delivery of pledged securities to Trustee and holding of same by Trustee 33

Sec. 2. Powers of Trustee with respect to pledged shares of stock as to maintaining corporate existence, qualifying directors, etc..... 34

Sec. 3. Voting of shares of stock pledged hereunder..... 35

Sec. 4. Application of dividends upon pledged shares of stock..... 36

Sec. 5. (a) Merger or consolidation of Controlled Companies..... 37

(b) Amendments or alterations of charters or by-laws of Controlled Companies, and increase or decrease of stock of such companies 37

(c) Releases of pledged securities..... 38

(1) In case of sale or exchange of pledged securities..... 38

(2) In case of sale of all the property of a corporation.... 38

(3) In case of merger or consolidation..... 39

Consent to releases..... 39

Substitution of other securities, etc., for released securities..... 39

Sec. 6. Prohibition of sale, exchange or release of stock or all property of Controlled Companies, except as herein provided..... 39

Sec. 7. Release of pledged securities for cash or other securities..... 40

Sec. 8. Partial releases of pledged securities on payment of part of notes 42

Sec. 9. Liability of Trustee as to releases..... 42

Sec. 10. General powers of Trustees with respect to pledged securities and protection thereof 42

ARTICLE IV.

REDEMPTION OF NOTES.

Sec. 1. Right of redemption of notes, premiums therefor, and notice of redemption 43

Sec. 2. Cancellation and surrender of redeemed or paid notes..... 44

Sec. 3. Sufficiency of notice of redemption..... 44

Sec. 4. Release of trust estate upon deposit of funds with Trustee for payment or redemption of notes..... 45

Sec. 5. Return of funds not used for payment of notes within three years 45

ARTICLE V.

INDIVIDUAL IMMUNITY OF PROMISORS, EXECUTIVE COMMITTEE AND HOLDERS OF PARTICIPATION CERTIFICATES.

Release of individual liability of Promisors, Executive Committee and holders of participation certificates..... 45

ARTICLE VI.

RIGHTS OF NOTE HOLDERS.

Sec. 1. Rights of action vested in Trustees..... 46
Sec. 2. Proof of execution of instruments by note holders..... 47
Sec. 3. Powers of note holders as to releases, waivers and modification of trust indenture..... 48

ARTICLE VII.

POWERS OF THE PROMISORS.

Sec. 1. Authorization of one of the Promisors to act for all of the Promisors, and appointment of agents of the Promisors..... 49
Sec. 2. Revocation of appointments of agents, etc., and substitution.... 49
Sec. 3. Effect of death of a Promisor..... 50
Sec. 4. Definition of Promisors..... 50
Sec. 5. Successor trustees under trust agreement creating Associated Simmons Hardware Companies 50
Sec 6. Sufficiency of notice to Promisors..... 50
Sec. 7. Liability of Trustee and Co-Trustee..... 51

ARTICLE VIII.

RIGHTS AND REMEDIES IN EVENT OF DEFAULT.

Sec. 1. Events of default..... 51
(a) Nonpayment of interest continued for 30 days..... 51
(b) Nonpayment of principal..... 51
(c) Default in observance of other covenants continued for 30 days after notice to Promisors from Trustee..... 51
(d) Insolvency, bankruptcy, liquidation or general assignment of any of Controlled Companies..... 51
(e) Appointment of receiver of any of Controlled Companies, or of its properties..... 51
(f) Sequestration of property of Controlled Companies or Promisors not released within 60 days, or judgment against Promisors, or Controlled Companies unsatisfied for 60 days..... 51
Declaration of maturity of outstanding notes..... 52

Sec. 2. Voting of pledged stock and collection of dividends in event of default 52

Sec. 3. Sale of trust estate in event of default 53
Place and notice of sale 53
Adjournment of sale 54
Delivery of securities to purchaser at sale 54
Effect of sale 54
Proceeding by suit and foreclosure in lieu of exercise of power of sale 55

Sec. 4. Application of proceeds of sale of trust estate 55

Sec. 5. Application of notes in payment of purchase price by purchaser . . 56
Trustees or note holders may become purchasers at sale 56

Sec. 6. Promisors to pay amount due in event of default 56
Trustee may recover judgment as trustee of an express trust 57
Application of monies collected by Trustee in event of suit 58
Trustee may act without Co-Trustee 58

Sec. 7. Waiver of stay, valuation and redemption laws by Promisors . . . 58
Waiver of jurisdiction of courts by Promisors 59

Sec. 8. Delay, etc., of Trustees not a waiver of defaults 59

Sec. 9. Remedies not exclusive, but cumulative 59

Sec. 10. Restoration of rights of Trustees in event of discontinuance of proceedings or adverse ruling therein 60

ARTICLE IX.

THE TRUSTEES.

Sec. 1. Conditions of acceptance of trusts by Trustees 60
Not responsible:
(a) For recitals in notes and indenture 60
(b) For execution, validity or sufficiency of notes and indenture 60
(c) For recordation, etc 60
(d) For application of proceeds of notes 61
(e) For acts of agents, etc 61
(f) For instituting or defending suits, or for notice of defaults, etc. 61
(g) For acting upon documents, etc. or in accordance with opinion of counsel 61
(h) For errors, etc. 61
(i) Trustees may acquire notes, etc 62
(j) Trustees may treat monies as general deposit 62
(k) Compensation of Trustees and payment of expenses of Trustees 62

Sec. 2. Resignation of Trustees..... 62
Sec. 3. Appointment of successor Trustees..... 63
Sec. 4. Effect of merger or consolidation of Trustees..... 64
Sec. 5. Rights, powers and duties of successor Trustees..... 64
Sec. 6. Powers and duties of Co-Trustee..... 65
Sec. 7. Definition of Trustee and Co-Trustee..... 65
Sec. 8. Trustees represent holders of notes..... 65

ARTICLE X.

INTERPRETATION AND SUNDRY PROVISIONS.

Sec. 1. Effect of illegality of any provision of notes or indenture..... 66
Sec. 2. Indenture binding on successors of Promisors..... 66
Sec. 3. Execution of indenture in counterparts..... 66
TESTIMONIUM 66
SIGNATURES AND SEALS OF PARTIES TO INDENTURE..... 67
ACKNOWLEDGMENTS OF PARTIES.....68-72

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This Indenture, made this first day of May, 1920, by and between **WALLACE D. SIMMONS, LEVI L. RUE** and **EDWARD H. SIMMONS,** as the present acting and qualified Trustees under a certain Agreement and Declaration of Trust made as of the 26th day of April, 1920, creating a trust therein called **ASSOCIATED SIMMONS HARDWARE COMPANIES,** for themselves as such trustees and their successors in said trust (hereinafter called the "Promisors"), parties of the first part, and **CONTINENTAL AND COMMERCIAL TRUST AND SAVINGS BANK,** a corporation organized and existing under the laws of the State of Illinois (hereinafter called the "Trustee"), and **FIRST NATIONAL BANK IN ST. LOUIS,** a corporation organized and existing under the National Banking Laws and authorized to execute and accept trusts (hereinafter referred to as Co-Trustee), parties of the second part, both of which parties of the second part are together hereinafter referred to as "Trustees," WITNESSETH:

Parties.*

"Promisors."

"Trustee."

"Co-Trustee."

"Trustees."

WHEREAS, an executed original copy of the aforesaid Agreement and Declaration of Trust creating the trust therein called Associated Simmons Hardware Companies is, contemporaneously with the execution of this indenture, filed with the Trustee, and under the provisions of said Agreement and Declaration of Trust the following powers, among others, are conferred upon the trustees acting under said Agreement and Declaration of Trust, and being the Promisors above designated, parties of the first part to this indenture, to wit:

Trust agreement creating Associated Simmons Hardware Companies.

"ARTICLE THREE.

SECTION 1. (h) To borrow money from time to time and to issue notes, bonds or other evidences of indebtedness, either secured or unsecured, and for the purpose of

Powers of Promisors to borrow money and issue notes.

*Marginal notes were not on original executed indentures.

securing the same to execute and deliver any mortgage, pledge, collateral trust indenture or other lien or incumbrance upon the whole or any part of the trust estate, all upon such terms and conditions and for such purposes and in such manner as they may determine; and to sell said notes, bonds or other evidences of indebtedness either at par or for such amount, either more or less than par, as they may determine.

and

Trust estate.

WHEREAS, there is included in the trust estate mentioned and referred to in said Agreement and Declaration of Trust the shares of stock and certificates therefor hereinafter mentioned and pledged and assigned to the Trustees under this indenture; and

Authority of Promisors.

WHEREAS, under said Agreement and Declaration of Trust the trustees therein (the Promisors herein named, parties of the first part to this indenture) have power and are authorized to enter into and execute an indenture or agreement evidencing the terms and conditions upon which any of said trust estate may be pledged for the purpose of securing any notes of the Promisors; and

Authorization of notes and indenture by Promisors.

WHEREAS, in pursuance of the provisions of said Agreement and Declaration of Trust, and under the powers therein granted and conferred, the Promisors have resolved and determined to execute and issue their notes (hereinafter referred to as notes) for the aggregate principal amount of Ten Million Dollars ($10,000,000), to be dated May 1, 1920, and to mature and become payable on May 1, 1925, and to bear interest at the rate of seven per cent (7%) per annum from the day of the date thereof, the first interest to be payable on July 1, 1920, and subsequent installments of interest to be payable on January 1 and July 1 of each year thereafter until the maturity of said notes (except that an installment of said interest shall also be payable on May 1, 1925), which notes are to be known as "Associated Simmons Hardware Companies

Five-Year Seven Per Cent Secured Gold Notes," and both principal and interest of which notes are to be payable at the office of Continental and Commercial Trust and Savings Bank, in the City of Chicago, Illinois, or, at the option of the holder, at the office of the First National Bank in the Borough of Manhattan, in the City of New York, New York, or at the office of the National Shawmut Bank, in the City of Boston, Massachusetts, or at the office of the First National Bank in St. Louis, in the City of St. Louis, Missouri, in gold coin of the United States of America of or equal to the standard of weight and fineness existing on May 1, 1920, and which notes and the interest coupons to be attached thereto evidencing said interest payments are to be substantially in the forms hereinafter set forth; and said Promisors, in order to secure the payment of said notes, have resolved and determined to execute a collateral trust indenture in the form of this indenture, pledging and assigning to the Trustees the shares of stock and certificates therefor hereinafter mentioned and described, upon the trusts hereinafter set forth; and

Whereas, the notes to be issued under and secured by this indenture, the coupons for interest to be annexed to said notes, and the certificate of the Trustee to be endorsed on said notes are to be in substantially the following forms (except as to denominations and distinguishing numbers):

(*Form of Note.*)

Form of note.

No..... $1,000.00

UNITED STATES OF AMERICA,

Associated Simmons Hardware Companies,

Five-Year Seven Per Cent Secured Gold Note.

For value received the undersigned (hereinafter called Promisors), not individually, but as the acting and qualified trustees under a certain Agreement and Declaration of Trust dated as of April 26, 1920, creat-

ing a trust therein called Associated Simmons Hardware Companies, acknowledge themselves indebted and hereby promise to pay to the bearer hereof, or if this note be registered, then to the registered holder thereof, the sum of One Thousand Dollars ($1,000), on the first day of May, 1925, and to pay interest thereon from the date hereof until the payment of the principal hereof, at the rate of seven per cent (7%) per annum, on the first day of July and the first day of January of each year after the date hereof (except that there shall also be an interest payment on May 1, 1925), the interest hereon until maturity hereof being payable on presentation and surrender of the interest coupons hereto annexed as they severally become due.

Both principal and interest of this note are payable at the office of Continental and Commercial Trust and Savings Bank in the City of Chicago, Illinois, or at the option of the holder, at the office of First National Bank in the Borough of Manhattan, in the City of New York, New York, or at the office of National Shawmut Bank in the City of Boston, Massachusetts, or at the office of First National Bank in St. Louis, in the City of St. Louis, Missouri, in gold coin of the United States of America of or equal to the standard of weight and fineness existing on May 1, 1920, without deduction for any tax or taxes (except federal income taxes in excess of 2% and inheritance and succession taxes), which the Promisors (or their successors) or the Trustees under the trust indenture hereinafter mentioned or said banks or either of them may be required to pay thereon or to deduct or retain therefrom under any present or future constitution, law or lawful regulation of the United States or of any state, territory, county, municipality or other lawful taxing authority therein. The Promisors further agree, as provided in said trust indenture, to reimburse to the holder hereof any and all taxes (except any succession or inheritance taxes) which may be imposed upon this note or the holder hereof by or for the benefit of the Commonwealth of Pennsylvania under the laws of said commonwealth, but not in excess of four mills per annum on each dollar of the principal amount of this note.

This note is one of an authorized issue of notes of the Promisors limited to the aggregate principal amount of Ten Million Dollars ($10,000,000) at any one time out-

standing, known as Associated Simmons Hardware Companies Five-Year Seven Per Cent Secured Gold Notes, all of which are of like date, tenor and effect (except as to denominations and distinguishing numbers) and all issued and to be issued under and equally secured by a trust indenture dated May 1, 1920, between the Promisors and Continental and Commercial Trust and Savings Bank, Chicago, Illinois and First National Bank in St. Louis, as Trustees, to which indenture reference is hereby made for a specification of the property therein pledged and assigned and agreed to be pledged and assigned as security for the payment of said notes, and the nature and extent of such security, and the rights of the holders of said notes, and the terms and conditions upon which said notes are issued and secured.

This note may be called and redeemed by the Promisors (or their successors) on any interest date prior to its fixed maturity upon the notice and in the manner and upon the terms prescribed in said trust indenture, and upon payment of the principal thereof and accrued interest to the date of redemption, and upon payment of the following premiums upon the principal when called for redemption and payment in the following years, viz.: two and one-half per cent (2½%) in 1920; two per cent (2%) in 1921; one and one-half per cent (1½%) in 1922; one per cent (1%) in 1923; one-half per cent (½%) in 1924, and no premium in 1925.

In event of a default as specified in said trust indenture, the principal of this note and of the other notes of said issue may be declared to be due before the date of maturity herein fixed, in the manner and with the effect provided in said trust indenture; and in such event the Promisors agree hereby promptly to pay the same in accordance with the terms of said trust indenture.

This note shall pass by delivery unless registered in the owner's name upon registration books kept for that purpose by Continental and Commercial Trust and Savings Bank, Trustee under said trust indenture, at its office in the City of Chicago, Illinois, and such registry noted hereon by said Trustee. After such registry no transfer hereof shall be valid unless made on such registration books by the registered owner in person or by attorney duly authorized in writing and such registration similarly noted hereon, but it may be discharged from registry by transfer to bearer made on

such books and noted hereon and thereafter shall be transferable by delivery, but may again from time to time be registered or transferred to bearer as before. While registered, only the registered holder hereof shall be entitled to receive the principal hereof, but such registry shall not affect the negotiability of the interest coupons which shall always continue to be transferable by delivery notwithstanding any registration.

This note is executed by the Promisors, not individually, but as trustees under the aforesaid Agreement and Declaration of Trust dated as of April 26, 1920, to which reference is hereby made; and any and all personal liability of any present or future trustee under said Agreement and Declaration of Trust is expressly and strictly limited to the application and distribution of the property from time to time constituting the trust estate thereunder, in accordance with the provisions of said Agreement and Declaration of Trust and the trust indenture above mentioned; and any and all liability of any present or future trustee (except as aforesaid) or member of the executive committee in said Agreement and Declaration of Trust named or provided for, or shareholder or other beneficiary thereunder, is, by the acceptance and as a consideration for the issue and execution hereof, expressly waived by the holder hereof.

The principal and interest in respect to this note shall be payable without regard to any equities between the Promisors and the original or any intermediate holder hereof; the bearer, or if registered, the registered holder hereof, may sue hereon in his own name; and this note shall have all other attributes of a negotiable instrument, and every holder hereof by accepting this note assents to the foregoing provisions.

This note shall not be obligatory for any purpose unless and until it shall have been authenticated by the execution by said Continental and Commercial Trust and Savings Bank as Trustee under said trust indenture, of the certificate endorsed hereon.

In witness whereof at the City of Boston, in the State of Massachusetts, the undersigned as trustees under said Agreement and Declaration of Trust have caused their names to be hereunto affixed by one of them acting on behalf of all of them, and the interest coupons hereto annexed to be executed by the facsimile signature of one of them acting on behalf of all of them (all pursuant to

authority given by all of them), this first day of May, 1920.

WALLACE D. SIMMONS,
LEVI L. RUE,
EDWARD H. SIMMONS,
As Acting and Qualified Trustees Under the Agreement and Declaration of Trust Dated as of April 26, 1920, creating the Trust Therein Called Associated Simmons Hardware Companies, and Not Individually (hereinbefore designated as Promisors),
By.....
One of Said Trustees Acting Pursuant to Authority Given by All of Said Trustees.

(*Form of Interest Coupon.*) Form of coupon.

No..... $35.00

On the first day of ....., 19..... (unless the note herein mentioned shall have been duly called for previous redemption), upon presentation and surrender hereof at the office of the Continental and Commercial Trust and Savings Bank, in the city of Chicago, Illinois, or, at the option of the bearer, at the office of First National Bank, in the Borough of Manhattan, in the city of New York, New York, or at the office of National Shawmut Bank in the City of Boston, Massachusetts, or at the office of First National Bank in St. Louis, in the city of St. Louis, Missouri, the undersigned will pay to the bearer Thirty-five Dollars ($35) in gold coin of the United States of America, of the standard of weight and fineness existing on May 1, 1920, without deduction for taxes (except federal income taxes in excess of 2%, and inheritance and succession taxes), being the interest then due on the Five-Year Seven Per Cent Secured Gold Note of the Associated Simmons Hardware Companies, Numbered .....

WALLACE D. SIMMONS,
LEVI L. RUE, and
EDWARD H. SIMMONS,
As Trustees Under an Agreement and Declaration of Trust Dated April 26, 1920, Creating a Trust Therein Called Associated Simmons Hardware Companies,
By.....
One of said Trustees, pursuant to authority given by all of said Trustees.

Form of Trustee's certificate.

(*Form of Trustee's Certificate.*)

This is to certify that this is one of the notes described in the within mentioned trust indenture.

CONTINENTAL AND COMMERCIAL TRUST AND SAVINGS BANK,
Trustee,

By.....
Assistant Secretary.

Performance of requirements of law, etc.

AND WHEREAS, all acts and things prescribed by the aforesaid Agreement and Declaration of Trust dated as of April 26, 1920, and required by law or otherwise, to make said Five-Year Seven Per Cent Secured Gold Notes, when executed by the Promisors and authenticated by the Trustee, valid, legal and binding obligations, and to make this indenture a valid, legal and binding agreement for the security thereof, and to make the deposit, pledge and assignment of the shares of stock and certificates therefor under this indenture lawful and valid, have duly and lawfully been done and performed;

Pledge of stocks, etc., to secure notes.

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That, in order to secure the payment of the principal and interest of all of said notes at any time issued and outstanding under this indenture, according to their tenor, purport and effect, and to secure the performance and observance of all the covenants and conditions therein and herein contained, and to declare the terms and conditions upon which said notes are issued, received and held, and for and in consideration of the premises, and of the acceptance of said notes by the holders thereof, and of the sum of One Hundred Dollars ($100) lawful money of the United States to the Promisors duly paid by the Trustees, at or before the ensealing and delivery of this indenture, receipt whereof is hereby acknowledged, the Promisors have executed and delivered this indenture, and have sold, pledged, assigned, transferred and set over, unto said Continental and Commercial Trust and Savings Bank,

and First National Bank in St. Louis, as Trustees hereunder, their successors and assigns in the trust hereby created, the following described property, namely:

List I.

STOCKS OF CONTROLLED COMPANIES.

Stocks of Controlled Companies.

All and singular the following shares of stock of the following several corporations (herein termed and hereinafter mentioned as "Controlled Companies"), the certificates for which, duly endorsed in blank for transfer have been or are to be delivered to the Trustee:

Simmons Hardware Company (Missouri).

Item 1: *Simmons Hardware Company* (*Missouri*).

(a) 14,985 shares, of the aggregate par value of $1,498,500, of the first preferred stock of the Simmons Hardware Company, a corporation organized and existing under the laws of the State of Missouri, out of the total authorized and outstanding stock of said Company of 15,000 shares, being all of said authorized and outstanding shares of stock except only the shares held by the directors of said Company.

(b) 15,000 shares, of the aggregate par value of $1,500,000, of the second preferred stock of said Simmons Hardware Company, being the total number of shares of said stock authorized and outstanding.

(c) 15,000 shares, of the aggregate par value of $1,500,000, of the common stock of said Simmons Hardware Company, being the total number of shares of said stock authorized and outstanding.

Simmons Hardware Company (Pennsylvania).

Item 2: *Simmons Hardware Company* (*Pennsylvania*).

9,982 shares, of the aggregate par value of $998,200, of the capital stock of Simmons Hardware Company, (of Philadelphia), a corporation organized and existing under the laws of the State of Pennsylvania, out of the total authorized and outstanding stock of said Company of 10,000 shares, being all of said authorized and outstanding shares of stock, except only the shares held by the directors of said Company.

Simmons Hardware Company (Minnesota).

Item 3: *Simmons Hardware Company* (*Minnesota*).

. 3,993 shares, of the aggregate par value of $399,300, of the capital stock of Simmons Hardware Company, (of Minneapolis), a corporation organized and existing under the laws of the State of Minnesota, out of the total authorized and outstanding stock of said Company, of 4,000 shares, being all of said authorized and outstanding shares of stock, except only the shares held by the directors of said Company.

The Morton-Simmons Hardware Company (Kansas).

Item 4: *The Morton-Simmons Hardware Company* (*Kansas*).

(a) 991 shares, of the aggregate par value of $99,100, of the preferred stock of The Morton-Simmons Hardware Company (of Wichita, Kansas), a corporation organized and existing under the laws of the State of Kansas, out of the total authorized and outstanding preferred stock of said Company, of 1,000 shares, being all of said authorized and outstanding shares of preferred stock, except only the shares held by the directors of said Company.

(b) 1,500 shares, of the aggregate par value of $150,000, of the common stock of said The Morton-Simmons Hardware Company, being all of the authorized and outstanding common stock of said Company.

The Simmons Hardware Company (Ohio).

Item 5: *The Simmons Hardware Company* (*Ohio*).

4,991 shares, of the aggregate par value of $499,100, of the capital stock of The Simmons Hardware Company, (of Toledo, Ohio), a corporation organized and existing under the laws of the State of Ohio, out of the total authorized and outstanding stock of said Company, of 5,000 shares, being all of said outstanding shares of stock, except only the shares held by the directors of said Company.

Dymond-Simmons Hardware Company (Iowa).

Item 6: *Dymond-Simmons Hardware Company* (*Iowa*).

2,993 shares, of the aggregate par value of $299,300, of the common stock of Dymond-Simmons Hardware Company, (of Sioux City, Iowa), a corporation organized and existing under the laws of the State of Iowa, out of the total authorized and outstanding common stock of said Company, of 3,000 shares, being all of said outstand-

ing shares of stock except only the shares held by the directors of said Company.

Item 7: *Simmons Hardware Company* (*New York*). **Simmons Hardware Company (New York).**

94 shares, of the aggregate par value of $9,400, of the capital stock of Simmons Hardware Company, (of New York City), a corporation organized and existing under the laws of the State of New York, out of the total authorized and outstanding stock of said Company, of 100 shares, being all of said authorized and outstanding shares of stock, except only the shares held by the directors of said Company.

Item 8: *Simmons Hardware Company* (*Massachusetts*). **Simmons Hardware Company (Massachusetts).**

95 shares, of the aggregate par value of $9,500, of the capital stock of Simmons Hardware Company, (of Boston, Massachusetts), a corporation organized and existing under the laws of the State of Massachusetts, out of the total authorized and outstanding stock of said Company of 100 shares, being all of said authorized and outstanding shares of stock except only the shares held by the directors of said Company.

Item 9: *Simmons Warehouse Company* (*New Jersey*). **Simmons Hardware Company (New Jersey).**

2,495 shares, of the aggregate par value of $249,500, of the capital stock of Simmons Warehouse Company, (of Jersey City, New Jersey), a corporation organized and existing under the laws of the State of New Jersey, out of the total authorized and outstanding stock of said Company, of 2,500 shares, being all of said authorized and outstanding shares of stock except only the shares held by the directors of said Company.

Item 10: *The Walden Knife Company* (*New York*). **The Walden Knife Company (New York).**

1,395 shares, of the aggregate par value of $13,950, of the capital stock of The Walden Knife Company (of Walden, New York), a corporation organized and existing under the laws of the State of New York, out of the total authorized and outstanding stock of said Company, of 2,000 shares, of the par value of $10 each.

Frye Phipps Co. (Massachusetts).

Item 11: *Frye Phipps Co.* (*Massachusetts*).

1,495 shares, of the aggregate par value of $149,500, of the capital stock of the Frye Phipps Co. (of Boston), a corporation organized and existing under the laws of the State of Massachusetts, out of the total authorized and outstanding stock of said Company, of 1,500 shares, being all of said authorized and outstanding shares of stock of said Company, except only the shares held by the directors of said Company.

Simmons Import & Export Corporation (New York).

Item 12: *Simmons Import & Export Corporation* (*New York*).

93 shares, of the aggregate par value of $9,300, of the capital stock of Simmons Import & Export Corporation, (of New York City), a corporation organized and existing under the laws of the State of New York, out of the total authorized and outstanding stock of said corporation, of 100 shares, being all of said authorized and outstanding shares of stock, except only the shares held by the directors of said Corporation.

Universal Paint Company (Missouri).

Item 13: *Universal Paint Company* (*Missouri*).

995 shares, of the aggregate par value of $99,500, of the capital stock of Universal Paint Company, (of St. Louis), a corporation organized and existing under the laws of the State of Missouri, out of the total authorized and outstanding stock of said Company, of 1,000 shares, being all of said authorized and outstanding shares of stock, except only the shares held by the directors of said Company.

Stanwood Motor Car Company (Missouri).

Item 14: *Stanwood Motor Car Company* (*Missouri*).

995 shares, of the aggregate par value of $99,500, of the capital stock of Stanwood Motor Car Company, (of St. Louis), a corporation organized and existing under the laws of the State of Missouri, out of the total authorized and outstanding stock of said Company, of 1,000 shares, being all of said authorized and outstanding shares of stock, except only the shares held by the directors of said Company.

Item 15: *Hardware Distributers Company (New Jersey).*

Hardware Distributers Company (New Jersey).

15 shares of the aggregate par value of $1,500, of the capital stock of Hardware Distributers Company, a corporation organized and existing under the laws of the State of New Jersey, out of the total authorized and outstanding stock of said Company, of 20 shares, being all of said authorized and outstanding shares of stock, except the shares held by the directors of said Company.

Item 16:

Stock now owned or hereafter acquired of other controlled companies as herein defined.

Also all shares of stock of any other corporations (not included in List II as hereinafter specified) which may be now owned or hereafter acquired or organized, a majority of the outstanding stock of which is owned or acquired by the Promisors (or their successors) under the said Agreement and Declaration of Trust dated as of April 26, 1920, and which companies shall be deemed Controlled Companies for the purposes of this indenture, it being understood that there may be excluded therefrom sufficient shares to qualify directors of such companies; and the Promisors hereby undertake and agree to deliver such shares of stock to the Trustee hereunder, as and when said shares of stock are acquired and which shares of stock when so received by the Trustee shall be held as pledged under and subject to the terms and conditions of this indenture.

Item 17:

Stocks, notes, etc., of Controlled Companies, except notes evidencing current borrowings from the Promisors.

Also any and all shares of stock and all notes, bonds, or obligations of any of the aforesaid Controlled Companies (but not including any notes or obligations of Controlled Companies to the Promisors evidencing current borrowings from the Promisors maturing not more than six months after the date thereof), or of any other voluntary associations or corporations which the Promisors as trustees under the said Agreement and Declaration of Trust dated as of April 26, 1920, or any of the Controlled Companies, or the Trustees hereunder, may at any time receive or may become entitled to receive.

List II.

Stocks carried as investments.

STOCKS OF OTHER THAN CONTROLLED COMPANIES, CARRIED AS INVESTMENTS BY THE PROMISORS.

Scruggs, Vandervoort, Barney Dry Goods Company (Missouri).

Item 1: *Scruggs, Vandervoort, Barney Dry Goods Company (Missouri).*

(a) 1,000 shares of the aggregate par value of $100,000 of the second preferred stock of Scruggs, Vandervoort, Barney Dry Goods Company (of St. Louis), a corporation organized and existing under the laws of the State of Missouri, out of the total outstanding second preferred stock of said Company consisting of 7,493¾ shares.

(b) 3,000 shares of the aggregate par value of $300,000 of the common stock of said Scruggs, Vandervoort, Barney Dry Goods Company, out of the total outstanding common stock of said Company consisting of 25,000 shares.

Grant Leather Corporation (Virginia).

Item 2: *Grant Leather Corporation (Virginia).*

(a) 10,920 shares of the aggregate par value of $1,092,000 of the preferred stock of Grant Leather Corporation, (of Kingsport, Tennessee), a corporation organized and existing under the laws of Virginia, out of the total authorized and outstanding preferred stock of said Company, consisting of 20,000 shares.

(b) 10,926 shares of the aggregate par value of $1,092,600 of the common stock of said Grant Leather Corporation, out of the total authorized and outstanding common stock of said corporation, consisting of 20,000 shares.

(c) Any other shares of the stock of said Grant Leather Corporation to which the Promisors (or their successors) may be now or hereafter entitled.

Roanoke Spoke and Handle Company (Virginia).

Item 3: *Roanoke Spoke and Handle Company, Inc. (Virginia).*

(a) 150 shares of the aggregate par value of $15,000 of the preferred capital stock of Roanoke Spoke and Handle Company, Inc., (of Roanoke, Virginia), a corporation organized and existing under the laws of Vir-

ginia, being the total outstanding preferred stock of said Company.

(b) 248 shares of the aggregate par value of $24,800, of the common stock of said Roanoke Spoke and Handle Company, out of the total authorized and outstanding common stock of said Company, of 387 shares.

Item 4: *Pacific Development Company* (*New York*).

Pacific Development Company (New York).

834 shares of the aggregate par value of $41,700 of the Pacific Development Company, (of New York City), a corporation organized and existing under the laws of the State of New York, out of the total authorized and outstanding stock of said Company, of 100,000 shares of the par value of $50 each.

Item 5:

Other stocks.

Any other shares of stock or certificate therefor, in any corporation or association now owned or hereafter acquired by the Promisors (or their successors) and not hereinbefore described in aforesaid List I or this List II.

List III.

PROPERTY HEREAFTER PLEDGED HEREUNDER.

Property hereafter pledged hereunder.

Also all property of every name and nature from time to time hereafter by delivery or by writing of any kind, for the purposes hereof, pledged, assigned or transferred by the Promisors, or with their written consent, by anyone in their behalf, to the Trustees which hereby are authorized to receive any property at any and all times, as and for additional security, and also, when and as hereinafter provided, as substituted security, for the payment, as to both principal and interest, of the notes issued or to be issued hereunder, and to hold and apply any and all such property according to the terms hereof.

List IV.

Income from pledged securities.

ISSUES, PROFITS AND INCOME OF PLEDGED SECURITIES.

Also any and all issues, profits and income of the stock, certificates therefor and securities hereinbefore described and assigned, and any and all right, title and interest which may hereafter be acquired by the Promisors, as trustees under said Agreement and Declaration of Trust, dated April 26, 1920, in or to any of said shares of stock, certificates therefor, or securities.

(The capital stock of the Frye Phipps Co. and of the Grant Leather Corporation, as above listed and described may be delivered to the Trustee hereunder subsequent to the date of the execution of this indenture, and the Promisors covenant and agree so to deliver the same within thirty days from the date of this indenture; and the Trustees may execute this indenture, and the Trustee may authenticate and deliver the notes issuable hereunder upon the execution of this indenture by the Promisors and prior to the delivery of said stock to the Trustee hereunder.)

Habendum "Trust Estate."

To have and to hold all and singular the above-described shares of stock, certificates therefor and other securities (sometimes hereinafter referred to as the trust estate) hereby assigned and pledged or intended to be assigned and pledged or hereafter to be assigned and pledged unto the said Continental and Commercial Trust and Savings Bank as Trustee and said First National Bank in St. Louis, as Co-Trustee, and their successor or successors in trust and its and their assigns forever, said trust estate, however, to be held and administered by said Continental and Commercial Trust and Savings Bank, as such Trustee; but in trust nevertheless for the equal and proportionate use, benefit and security of each and every present and future holder of any of the notes or the coupons thereto appertaining issued under and pursuant to this indenture and without preference of any of said notes over any of the others by reason of priority

in the time of issue or negotiation thereof or otherwise howsoever, and for the enforcement of the payment of said notes and coupons when due according to their tenor, purport and effect and the performance of and compliance with the covenants and conditions of said notes and of this indenture, subject, however, to the provisions and stipulations in the said notes contained and to the terms, conditions, provisions and agreements hereinafter expressed and declared, and for the uses, purposes and trusts hereinafter set forth.

ARTICLE I.

ISSUE AND AUTHENTICATION OF NOTES.

Form of notes.

SECTION 1. The notes issued under and secured by this indenture shall be substantially in the form hereinbefore set forth and shall be limited to the aggregate principal amount of Ten Million Dollars ($10,000,000) at any one time outstanding. Said notes shall consist of coupon notes for the principal amounts of Five Hundred Dollars ($500) and One Thousand Dollars ($1,000) each, and shall be dated May 1, 1920, and mature and become payable on May 1, 1925. Notes for the principal amount of Five Hundred Dollars ($500) each shall be numbered from D 1 upwards, and notes for the principal amount of One Thousand Dollars ($1,000) each shall be numbered from M 1 upwards. The notes issued hereunder shall bear interest at the rate of seven per cent (7%) per annum from the date thereof, payable on July 1st and January 1st of each year after the date thereof, except that a payment of interest shall also be made on May 1, 1925. Said interest shall be evidenced by interest coupons to be attached to said notes, the first coupon to become due and payable on July 1, 1920, and to represent the interest on said notes from May 1, 1920 to July 1, 1920, and the last interest coupon to become due and payable on May 1, 1925,

Amount.

Denominations.

Maturity.

Interest.

and to represent the interest due and payable on said notes from January 1, 1925 to May 1, 1925. Both principal and interest of said notes shall be payable at the office of the Continental and Commercial Trust and Savings Bank in the City of Chicago, Illinois, or at the option of the holder at the office of the First National Bank in the Borough of Manhattan, in the City of New York, State of New York, or at the office of National Shawmut Bank, in the City of Boston, Massachusetts, or at the office of the First National Bank in St. Louis, in the City of St. Louis, Missouri, in gold coin of the United States of America of or equal to the standard of weight and fineness existing on May 1, 1920, without deduction for any tax or taxes (except federal income taxes in excess of 2% and inheritance and succession taxes), which the Promisors (or their successors), or the Trustees or the banks at which said notes are payable may be required to pay thereon or to deduct or retain therefrom under any present or future constitution, law or lawful regulation of the United States or of any state, territory, county, municipality or other lawful taxing authority therein.

Places of payment.

Payment without deduction for taxes, except federal income taxes in excess of 2 per cent, etc.

Execution of notes.

SECTION 2. The notes to be issued hereunder shall from time to time be signed by the Promisors as trustees under said Agreement and Declaration of Trust dated as of April 26, 1920, and not individually, or such notes bearing the name of each of the Promisors as such trustees shall be signed by any one of the said trustees on behalf of all the said trustees under said Agreement and Declaration of Trust, and said notes so executed shall be binding upon and be the notes of all of the Promisors, and shall thereupon be delivered to the Trustee for authentication, and shall be authenticated and delivered by the Trustee as hereinafter provided. The death of the Promisors or any of them, or any successor to them shall not operate to revoke said authorization to sign said notes. In event any of the trustees in whose names any of the notes shall have been

signed shall cease to be trustees or trustee under said Agreement and Declaration of Trust and thereby shall cease to be Promisors or Promisor hereunder, or in event any one of the Promisors who on behalf of all of the Promisors shall have signed any of said notes shall cease to be such a trustee under said Agreement, or Declaration of Trust, before the notes so signed shall have been actually executed and authenticated and delivered by the Trustee hereunder, such notes may nevertheless be executed, and when so executed, may be issued, authenticated and delivered as though the said three persons in whose names such notes have been signed, or the Promisor who has signed such notes on behalf of all the Promisors had not ceased to be such trustees and Promisors or trustee and Promisor as the case may be. And any note may be signed on behalf of the Promisors by a person who at the actual time of such signature shall be one of the trustees under said Agreement and Declaration of Trust, although at the time and date of such note such person shall not have been one of such trustees. The coupons for interest on said notes shall be authenticated by the facsimile signature of any one of the Promisors or any present or future agent of the Promisors, and for that purpose the Promisors may adopt and use a facsimile signature of any Promisor or any present or future agent notwithstanding the fact that he may have ceased to be such agent at the time when such notes shall be actually issued, authenticated and delivered.

Execution of interest coupons.

Section 3. Only such notes as shall bear thereon endorsed a certificate substantially in the form hereinbefore recited executed by the Trustee, by its Secretary or Assistant Secretary or other duly authorized agent shall be secured by this indenture or entitled to any lien, right or benefit hereunder. No such note or any coupon thereunto appertaining shall be valid for any purpose unless and until such certificate shall have been duly endorsed on such note. Such certificate of

Authentication of notes by Trustee.

the Trustee upon any note signed by or on behalf of the Promisors shall be conclusive and the only evidence that the note so authenticated was duly issued hereunder and is entitled to benefit of the trusts and security of this indenture. Before authenticating and delivering any such notes all interest coupons thereto appertaining and then matured shall be cut off, canceled and delivered to the Promisors by the Trustee.

Delivery of $7,500,000 of authenticated notes by Trustee.

SECTION 4. On the execution of this indenture there shall forthwith be executed by or on behalf of the Promisors and delivered to the Trustee and thereupon the Trustee without any further act of the Promisors shall authenticate and deliver Seven Million Five Hundred Thousand Dollars ($7,500,000) principal amount of said notes with all unmatured coupons thereto appertaining to or upon the written order of any one or more of the Promisors.

Provisions for authentication and delivery of $2,500,000 additional notes.

SECTION 5. The remaining Two Million, Five Hundred Thousand Dollars ($2,500,000) principal amount of the notes, or any part thereof, hereby secured, shall be from time to time executed by or on behalf of the Promisors and delivered to the Trustee, and shall thereupon be authenticated and delivered by the Trustee as follows:

Whenever there shall be delivered to the Trustee a certificate signed by the Promisors or a majority of them, stating that the Promisors have loaned or advanced the sum stated in the certificate to one of the Controlled Companies, or arranged or agreed to do so for the purpose of enabling such Controlled Company to pay off existing indebtedness or acquire additional property or assets, or provide working capital or funds to enable said Company to enlarge or extend its business, or that the Promisors have expended or have agreed to expend the amount stated in such certificate for the purpose of acquiring the capital stock (or a portion thereof) of another corporation, the acquisition of which is by the Promisors deemed beneficial to the interests of the Promisors and Controlled Companies and of the noteholders, the Trustee shall authenticate an amount of notes equal

in face amount to the amount specified in such certificate, and deliver the same with all unmatured coupons appertaining thereto, to or upon the written order of the Promisors or a majority of them, provided, however, that none of said notes shall be so authenticated and delivered unless there shall be filed with the Trustee, (a) a certificate signed by a vice president of the Continental and Commercial Trust and Savings Bank, Chicago, and a Vice President of the First National Bank in St. Louis approving the issuance of such notes; and (b) a certificate signed by a majority of the Promisors that there is not at the time any existing default under this indenture; and, (c) a certificate of a certified public accountant approved by the Trustee that at the close of the then last preceding fiscal year of the Promisors and of the Controlled Companies, or at a date not more than ninety (90) days prior to the date of such application for the issuance of said additional notes, the aggregate quick assets of the Promisors and the Controlled Companies (as such quick assets are hereafter defined in paragraph (n) of Section 1 of Article II of this indenture) was at least one and one-half times the aggregate net debt of the Promisors and Controlled Companies (as the said net debt is hereinafter defined in said paragraph (n) of Section 1 of Article II of this indenture), including the indebtedness evidenced by the notes outstanding under this indenture and the notes requested to be issued, and that the income of the Promisors and Controlled Companies during the last fiscal year or during a twelve-months' period ending not more than ninety days prior to the date of such application was not less than three (3) times the aggregate interest charges of the Promisors and of the Controlled Companies for and during such period, including the annual interest charge on the notes then requested to be authenticated hereunder. In computing said income there shall be included not only the interest, dividends and other moneys in any way actually received by them (other than from the notes issued hereunder or the sale of capital assets), but also all earnings lawfully applicable to but not declared in, the payment of dividends in respect of any Controlled Company after making the proper deductions for income apportionable to shares of stock of any companies not owned by the Promisors or by a Controlled Company; but there shall

be wholly excluded from said computation all moneys represented by interest in respect of intercorporate obligations, between Controlled Companies, and there shall also be deducted from the earnings before arriving at the amount of said income reasonable charges for depreciation and taxes of all kinds (other than Federal income taxes).

In computing said income of the Promisors and Controlled Companies there shall be included the earnings of the Controlled Companies, but there shall not be included the amount of any dividends received by the Promisors from Controlled Companies on account of such earnings.

Application of proceeds of notes.

SECTION 6. The net proceeds of said Seven Million, Five Hundred Thousand Dollars ($7,500,000) principal amount of said notes provided forthwith to be issued shall be applied *first,* to retire and redeem any secured indebtedness of the Promisors (other than the indebtedness created by this indenture), and, *second,* to reduce the floating indebtedness of the Promisors and of the Controlled Companies, and, *third,* the remainder of said proceeds shall be applied and used in such manner as the Promisors may determine, to provide additional working capital for the conduct, extension or development of the business of the Controlled Companies.

Temporary notes.

SECTION 7. Until the definitive notes can be prepared and issued under this indenture, the Promisors may sign or authorize to be signed in their behalf, and the Trustee shall thereupon authenticate and deliver in the same manner and under the same kind of orders as for the definitive notes, and in lieu of such definitive notes and subject to the same provisions, limitations and conditions, temporary typewritten, printed or lithographed notes, substantially of the tenor of the definitive notes hereinbefore recited, except that no coupon shall be attached to any of such temporary notes, and the same may be for the payment of Five Hundred Dollars ($500) or any multiple thereof. Each of such temporary notes shall bear upon its face the words "Temporary Seven Per Per Cent Secured Gold Note, exchangeable for definitive

notes," and shall be authenticated by the Trustee in the same manner as the definitive notes, and such authentication shall be conclusive evidence that the note so authenticated has been duly issued hereunder, and that the holder is entitled to the benefit of the trusts and security of this indenture. Such temporary notes shall be exchangeable at the office of the Trustee without charge or expense to the holder for a like aggregate principal amount of temporary notes of such different denominations as the Promisors may issue, or for a like aggregate principal amount of definitive notes when the same are ready for delivery, and upon the surrender of any such temporary notes for exchange such temporary notes shall forthwith be canceled by the Trustee, and delivered to the Promisors on their written demand. The Promisors covenant and agree forthwith to cause to be issued at their own expense definitive notes which shall be executed and delivered by the Promisors to the Trustee in order to enable the Trustee to exchange the same for temporary notes. Until so exchanged each of such temporary notes shall in all respects be entitled to the lien and security of this indenture as if it were a definitive note issued and authenticated hereunder; and interest thereon, when and as payable, shall be paid upon presentation thereof, and such payment endorsed thereon.

Replacement of mutilated, destroyed or lost notes.

SECTION 8. In the event any note issued hereunder shall become mutilated, or be destroyed or lost, the Promisors in their discretion may issue, and thereupon the Trustee shall authenticate and deliver, a new note, of like tenor, date and amount, bearing the same number, in exchange and substitution for and upon cancellation of the mutilated note and its coupons, or in lieu of and in substitution for the note and its coupons so destroyed or lost. The applicant for such substituted note shall furnish to the Promisors and to the Trustee evidence of the destruction or loss of such note, and of its coupons so destroyed or lost, which evidence shall be

satisfactory to the Promisors and to the Trustee in their discretion, and said applicant shall also furnish indemnity satisfactory to the Promisors and to the Trustee, as may be required by them, and shall comply with such other reasonable regulations as may be prescribed by the Promisors or the Trustee.

Registration of notes.

SECTION 9. The coupon notes hereby secured shall be negotiable and transferable by delivery, unless registered for the time being in the name of the holder in books kept for that purpose by the Trustee at its office in the City of Chicago, Illinois, such registry being noted on the note or notes by said Trustee, after which no transfer of such note or notes so registered shall be valid unless made on such books by the registered holder in person, or by his attorney duly authorized in writing, and similarly noted on said note or notes; but any coupon note may be discharged from registration by being in like manner transferred thereon to bearer, after which it shall be transferable by delivery. The registration of any coupon note shall not impair the negotiability of said coupons, which shall always continue to be negotiable and transferable by delivery, notwithstanding such registration. The Promisors and the Trustee shall not be bound to take notice of any trusts appearing on or referred to in said notes or otherwise with respect thereto, and may transfer the same, on the direction of the person registered as holder thereof, whether named as trustee or otherwise, as though such person was the beneficial holder thereof. All expense of registration and transfer of notes shall be borne by the holder thereof. The person in whose name any note shall be registered shall, for the purposes of this indenture, be deemed and regarded as the owner thereof, and thereafter payment of the principal of such registered note shall be made only to or upon the order of such registered holder thereof, and all such payments shall be valid and effectual to satisfy and discharge liability upon such notes, to the

extent of the sum or sums so paid. The Promisors and the Trustee may deem and treat the bearer of any note which shall not at the time be registered, as hereinbefore authorized, and the bearer of any coupon for interest on any such note, whether such note be registered or not, as the absolute holder of such note or coupon, for the purpose of receiving payment therefor, and for all other purposes whatsoever; and the Promisors and the Trustee shall not be affected by any notice to the contrary.

ARTICLE II.

COVENANTS OF THE PROMISORS.

Covenants of Promisors.

SECTION 1. The Promisors as trustees under the aforesaid Agreement and Declaration of Trust dated as of April 26, 1920, and not individually, covenant and agree to and with the Trustees:

Covenant to pay principal and interest.

(a) That they will duly and punctually pay or cause to be paid the principal and interest of every note issued hereunder according to the tenor of said note and coupons attached thereto, in gold coin of the United States of America of or equal to the standard of weight and fineness existing on May 1, 1920, and without deduction for any tax or taxes (except federal income taxes in excess of 2% and inheritance and succession taxes) which the Promisors or the Trustees or the Banks at which the same are payable may be required to pay thereon or to deduct or retain therefrom under any present or future constitution, law or lawful regulation of the United States or of any state, territory, county, municipality or other lawful taxing authority therein.

Tax refund under Pennsylvania laws.

(b) That they will pay to the Trustee on demand, as hereinafter provided, such sum or sums of money as shall be sufficient to reimburse the holder of any notes issued hereunder for all taxes (other than inheritance and succession taxes) not exceeding in the aggregate four mills per annum on each dollar of the principal amount of such notes, paid by them and assessed by the Commonwealth of Pennsylvania upon such notes or upon the hold-

ers thereof as residents of said Commonwealth by reason of their ownership, upon the written request of the holders for such reimbursement. Said request shall state the serial numbers of the notes and set forth that the owners were the holders thereof at the time when such demand was made and that such taxes were assessed upon such notes or assessed upon such holders as residents of the Commonwealth of Pennsylvania holding said notes and paid by them, and such request shall be made to the Trustee in writing at its office in the City of Chicago, Illinois, within a period of six months from the date of payment of said taxes by said holders. The Promisors shall not be liable to reimburse said holders for any taxes unless such request shall be made within said period of time, and they shall in no event be liable to reimburse such holders for any interest or penalty assessed upon or paid by them in addition to the amount of the said taxes as originally assessed. Upon receipt of any request for reimbursement the Trustee shall with reasonable promptness furnish the Promisors at such office as the Promisors shall designate, a copy of the same, and the Trustee shall thereafter pay to each holder of said notes making such request a sum sufficient to reimburse said payment of taxes as herein provided, when and as directed so to do by the Promisors out of the funds deposited with the Trustee by the Promisors for that purpose.

Covenant to pay taxes, etc., on trust estate and on property, etc., of Promisors and Controlled Companies.

(c) That they will from time to time duly pay and discharge all taxes, assessments and governmental charges or levies lawfully imposed upon the trust estate or any part thereof, or upon the income and profits thereof, and upon the income and profits of the Promisors and of the Controlled Companies and their properties as and when the same become due and payable, and also all taxes, assessments and governmental charges lawfully imposed upon the lien or interest of the Trustees or of the holders of the notes in respect to the trust estate; provided, however, that unless such payments shall be necessary in the opinion of the Trustees in order to prevent prejudice or loss to the trust estate, the Promisors shall not be required to pay any such taxes or assessments or governmental charges so long as in good faith they shall contest the validity thereof by appropriate legal proceedings; and in the event the Promisors or the Controlled Companies or any of them

shall fail seasonably to pay such taxes, assessments or governmental charges the Trustees (or either of them) may at their option pay such taxes, assessments or governmental charges without prejudice, however, to the rights of the Trustees or note holders hereunder arising in consequence of such failure, and the amount so paid by the Trustees (or either of them) with interest thereon from the date of payment until paid at the rate of seven per cent (7%) per annum shall be repaid by the Promisors upon demand, and shall become so much additional indebtedness secured by this indenture, and shall be paid out of the proceeds of any sale of the trust estate or out of any funds received by the Trustees (or either of them) hereunder if not otherwise paid by the Promisors; but the Trustees shall be under no obligation to pay any such taxes, assessments or other governmental charges unless fully indemnified against the expense thereof, and furnished with the means therefor.

Covenant not to create any prior lien on trust estate.

(d) That they will not create or suffer to be created any lien or charge whatsoever against the trust estate or any part thereof prior to the lien and security of this indenture, or do any act or thing whereby the lien or security hereof may be impaired; and that they will do all things necessary to protect and preserve the trust estate, and in every manner protect and preserve the security of the notes issued hereunder.

Covenant not to extend payment interest coupons, etc.

(e) That in order to prevent any accumulation after maturity of interest coupons they will not directly or indirectly extend or assent to the extension of time for payment of any coupon or interest upon any notes issued hereunder, and that in event the time for payment of any such coupons or interest shall be extended, whether or not such extension shall be by or with the consent of the Promisors, such coupons and interest shall not be entitled in event of default hereunder to the benefit of the security of this indenture except subject to the prior payment in full of the principal of all the notes issued hereunder, then outstanding, and all matured coupons and interest on said notes, payment of which has not been so extended.

Covenant to keep proper records of accounts, etc.

(f) That they will keep or cause to be kept proper books or records of account in which full, true and correct entries will be made of all dealings or transactions of or in relation to the plants, properties, business and affairs of the Promisors and of the Controlled Companies,

which shall at all reasonable times be open to the inspection of the Trustees (or either of them); that they will also furnish to the Trustee and to the Co-Trustee a complete assets and liabilities statement and audit, and a statement of the earnings of the Promisors and Controlled Companies as at the close of each fiscal year and at such other times as the Trustee or Co-Trustee may request; and all such statements and audits shall be certified to by certified public accountants satisfactory to the Trustees.

Covenant as to ownership of trust estate and of right to pledge same hereunder.

(g) That the Promisors are the lawful owners of the shares of stock and certificates therefor pledged under this indenture, and have good right, full power and lawful authority to pledge, assign, transfer and set over the same in the manner and form herein done or intended to be done, and that they have, and subject to the provisions hereof will preserve, good and indefeasible title to such pledged property and will warrant and forever defend the same to the Trustees against the claims of all persons whomsoever.

Covenant to pledge additional stocks, etc., hereafter acquired, etc.

(h) That they will pledge, assign, transfer, set over unto the Trustees and in pursuance thereof deliver to the Trustee any and all additional shares of stock of the companies mentioned in List I of the pledging clauses of this indenture, and all other stocks, notes, bonds, securities and other claims and all other property of any nature whatsoever which they may be entitled to receive as trustees under said Agreement and Declaration of Trust dated as of April 26, 1920, hereafter at any time acquired by them or on their behalf, and which under the terms of this indenture are to be pledged hereunder.

Covenant for further assurances.

(i) That they will from time to time, at all times hereafter, on reasonable request of the Trustees, make, execute, acknowledge and deliver all such other acts, transfers and assurances for the better assigning, transferring, assuring, conveying and confirming to the Trustees all and singular the trust estate at any time subject or to be subject hereto, as may be reasonably required by the Trustees, to carry out the purpose and intent hereof.

Covenant as to insurance.

(j) That at all times during the existence of any indebtedness hereby secured, they will keep or cause to be kept insured against loss or damage by fire, to the reasonable insurable value thereof all the plants, houses,

warehouses, buildings, structures of every kind, machinery, equipment, appliances, merchandise and other property of the Promisors and of the Controlled Companies, such as are usually insured by persons or companies engaged in like business, and if required by the Trustee they will cause use and profit or use and occupancy insurance and such other forms of insurance to be carried and maintained covering such warehouses, plants, and properties of the Controlled Companies and to such an amount as may be deemed proper and reasonable by the Trustee (but the Trustee shall be under no liability in determining whether and upon what properties such insurance shall be carried and in what amount, and in making such determination may accept and act upon the opinion of any insurance expert or advisor selected by it for that purpose); that when requested by the Trustee the Promisors or their insurance agents will furnish to the Trustee a list or lists of all such policies which shall show the names of the companies issuing the same, the number and amount of each policy, the dates of expiration, the property covered by each policy and the name and post office address of the agent issuing the same; and if so requested by the Trustee the said policies shall be deposited with said Trustee and from time to time there shall be furnished to the Trustee (if so required by it) evidence showing the payment of insurance premiums upon the said policies. In event of any loss covered by any policy of insurance the Promisors covenant and agree that they shall cause the insurance moneys so received on account thereof to be applied toward the repair, replacement of or addition to the property destroyed or damaged, or to the acquirement of other properties useful in connection with the business of the Controlled Companies. In event the Promisors fail to effect insurance as aforesaid, the Trustee may in its discretion procure such insurance, and all moneys paid by the Trustee for such insurance, together with interest thereon at the rate of seven per cent per annum shall be repaid by the Promisors upon demand and shall become so much additional indebtedness secured by this indenture, and shall be given a preference in payment over any of said notes or coupons, and shall be paid out of the proceeds of any sale of the trust estate, or out of any funds received by the Trus-

tee hereunder, if not otherwise paid by the Promisors, before any payment shall be made on said notes or coupons. The Trustee, however, shall be under no obligation to effect such insurance unless fully indemnified against the expense thereof and furnished with means therefor.

Covenant to maintain corporate existence of Controlled Companies.

(k) That until this indenture shall be discharged and canceled they will not suffer or permit any of the franchises or rights of any corporation, all of whose capital stock or a majority thereof, shall be then subject to this indenture as a part of the trust estate, to lapse or be forfeited, and that they will at all times when entitled so to do under the terms of this indenture, vote upon any shares to the end that such rights and franchises may be maintained in full force and effect so long as the same may be used or useful in the business of said corporation.

Covenant to maintain plants, etc.

(l) That at all times during the existence of any of the indebtedness hereby secured they will cause to be maintained, preserved and kept in good order, repair and condition, all the plants, warehouses, buildings, machinery, equipment and other property used in the conduct of the business of the Controlled Companies so that the efficiency of said property shall not be impaired.

Covenant as to borrowing of money by Controlled Companies.

(m) That so long as any of the interest or principal of the notes issued and outstanding hereunder shall remain unpaid, none of the Controlled Companies shall borrow any money except from the Promisors, and that there shall not be created or placed upon any of the

Covenant not to mortgage property.

property of any Controlled Company any mortgage indebtedness in addition to any mortgage indebtedness now outstanding against any property of any Controlled Company, and the Promisors will not cause or permit to be issued under any trust deed or mortgage now outstanding upon any property of any Controlled Company any bonds in addition to those now issued and outstanding, or under any other provisions of any mortgage or trust deed authorizing the authentication and delivery of additional

Exception.

bonds; *provided,* however, that with the written consent of the Trustees, additional mortgage indebtedness may be created to the extent of seventy-five per cent (75%) of the cost of additions, extensions or improvements to existing real property owned by the Controlled Companies at the date of the execution of this indenture. In determining such costs the Trustees may act and rely upon certificates

filed with them describing in reasonable detail the nature of such additions, extensions or improvements, and the real property upon which such additions, extensions or improvements have been made, and the name of the Controlled Company in which title thereto is vested, signed and verified by an engineer or appraiser or other person satisfactory to the Trustees and accompanied by legal opinion of counsel, satisfactory to the Trustees, certifying as to the title to such additions, extensions or improvements and that title thereto is vested in one of the Controlled Companies, subject to no other lien (other than liens for current taxes), but the lien which is herein authorized to be created with the consent of said Trustees; and the Promisors covenant and agree to cause said Controlled Companies to enter into such agreements with the Trustees hereunder as may be appropriate (in the opinion of the attorneys or counsel of the Trustees) to carry out the covenants and agreements in this paragraph contained.

Covenant as to quick assets.

(n) That the aggregate *quick assets* of the Promisors and the Controlled Companies shall at all times be at least equal in actual value to one and one-half times their aggregate *net debt.*

The term "*quick assets*" shall mean—

(1) Cash and cash items;

Definition of quick assets.

(2) Unpledged good accounts receivable, and short time bills and notes and acceptances having not more than six months to run, received in the ordinary course of business for goods sold;

(3) Merchandise or products manufactured, produced, prepared, or in the process of manufacture, production or preparation, and raw materials (it being understood that merchandise and materials shall be valued at the actual cost without interest if such cost is below the market value thereof at the time of valuation hereunder, but at the market value if at such time it be below the cost thereof, and that in the term "raw material," there shall be included no items, except such as are then in transit or are at some plant or warehouse of a Controlled Company); and

(4) Such other items as are generally regarded as working capital or quick assets by corporations conducting a business similar to that of the Promisors or Controlled Companies, including therein

stocks which have a determined, available and realizable market value but not including any stock or certificates therefor pledged hereunder.

Definition of net debt.

The term *"net debt"* shall mean the aggregate face amount of all debts, bonds, notes and other obligations, guaranties, endorsements, accounts payable, accrued rentals, and all other indebtedness of the Promisors and the Controlled Companies, including the indebtedness created and outstanding under this indenture (but excepting intercorporate obligations between the Controlled Companies) and deducting therefrom:—(1) such now existing indebtedness as is secured by real estate mortgages made by a Controlled Company owning real estate having a value of at least twice the amount of such mortgage indebtedness, and any mortgage indebtedness existing against any property acquired by any Controlled Company or the Promisors at the time of such acquirement and any renewals, refunding or extensions of such mortgage indebtedness.

Definition of Controlled Companies.

The term "Controlled Companies" shall mean and include the companies shares of stock of which are pledged under List I of the pledging clauses of this indenture therein described as Controlled Companies.

Right of Controlled Companies to borrow from Promisors.

(o) The Controlled Companies may issue to the Promisors unsecured notes or bills payable maturing in not more than seven months from the date of the making thereof, but only in the ordinary course of current operations to provide funds to purchase or to pay for merchandise, and then only subject to the provisions of paragraph (n) of Section 1 of Article II of this indenture, which notes or bills payable when received by the Promisors are not required to be pledged or deposited hereunder, but may be rediscounted or otherwise dealt with by the Promisors.

Covenant to maintain the trust creating Associated Simmons Hardware Companies.

(p) That until all notes issued and to be issued hereunder shall be paid in full, both as to principal and interest, and this indenture shall have been fully satisfied, the organization of the trust established by said Agreement and Declaration of Trust dated as of April 26, 1920, shall be maintained, unless the written consent of the Trustees waiving the requirements and provisions of this paragraph is obtained.

Covenant waiving redemption, etc., laws.

(q) That they will not at any time insist upon or take advantage in any manner whatsoever of any valuation,

appraisement, apportionment, or redemption law, or any other law now or at any time hereafter in force which may in any way alter, impair or modify the rights and remedies of the holders of the notes issued hereunder, or of the Trustees, or which shall change the time or place or means or mode of perfecting or enforcing such rights or remedies, and they hereby expressly waive all benefit and advantage of any and all such laws.

Covenant to pay attorneys' fees.

(r) That in the event of any suit or action to enforce the collection of any of said notes or interest coupons, the Promisors shall and will pay such reasonable counsel and attorneys' fees as may be allowed by order, decree, or judgment of the court in which such suit or suits or action or actions may be brought.

Permission for mortgage for $500,000 of Grant Leather Corporation.

(s) Nothing in this indenture contained shall be construed to prevent the placing of a mortgage indebtedness of not to exceed Five Hundred Thousand Dollars ($500,000) on the property of the Grant Leather Corporation, heretofore authorized by said corporation, but that the creation of any additional mortgage indebtedness by said corporation shall be subject to the same restrictions as contained in paragraph (m) of Section 1 of Article II of this indenture with respect to the creation of additional mortgage indebtedness by Controlled Companies.

Covenants for benefit of parties and noteholders.

SECTION 2. Nothing in this indenture or in the notes and coupons contained with respect to the covenants of the Promisors is intended or shall be construed to give to any person, firm or corporation, other than the parties hereunder, and the holders of said notes and coupons, any legal or equitable right, remedy or claim under this indenture, all said covenants being intended to be and being for the sole and exclusive benefit of the parties hereto and of all holders of notes and coupons issued hereunder and secured hereby.

ARTICLE III.

CONCERNING THE PLEDGED SECURITIES.

Pledged securities.

SECTION 1. The certificates for all the shares of stock enumerated and described in the conveying clauses hereof and pledged under this indenture, or intended so to be, and

Delivery of pledged securities to Trustee and holding of same by Trustee.

the certificates for other shares of stock which shall at any time hereafter become pledged under this indenture; or intended so to be, shall be delivered to the Trustee, duly endorsed in blank for transfer, or accompanied by an assignment or assignments sufficient to transfer the title thereto to the Trustee hereunder, or to the nominee or nominees of the Trustee. As hereinafter provided, the Trustee may at any time cause to be transferred into its name, as Trustee hereunder, any and all shares of stock, the certificates for which shall be delivered to the Trustee hereunder, or in its discretion it may hold such certificates in the name of the registered holder or holders thereof, at the time of such pledge and delivery, or in the name or names of its nominee or nominees, provided that in either case such certificate or certificates be endorsed in blank for transfer, or be accompanied by proper instruments of assignment in blank, duly executed by such registered holder. The Trustee may in its discretion at any time, and from time to time, stamp or cause to be stamped any or all of the certificates pledged hereunder, in such manner as to indicate that the same are held hereunder, and are subject to be disposed of only as provided in this indenture.

Powers of Trustee with respect to pledged shares of stock as to maintaining corporate existence, qualifying directors, etc.

SECTION 2. The Trustee may do whatever may be necessary for the purpose of maintaining, preserving, renewing or extending the corporate existence of any corporation any shares of the stock of which shall be held by the Trustee hereunder, and for such purpose may sell, assign, transfer and deliver so many shares of stock of any such corporation as may be necessary to qualify persons to act as directors of or in any other official relation to said corporation, and, whenever the Promisors, not being in default hereunder, shall in writing so request, stating in such request that they do not have any or a sufficient number of shares of stock for that purpose, the Trustee shall assign and transfer to persons designated by the Promisors a sufficient number of any shares

which shall then be held by the Trustee hereunder to qualify such persons to act as directors of or in any official relation to such corporation; provided, however, that in every such case the Trustee shall make such arrangements as it shall deem necessary for the protection of the Trustee hereunder, in respect to the shares so assigned, and in such case in its discretion may require the person to whom such shares are transferred to agree on such terms and for such price as may be agreed upon between the Trustee and such person to retransfer the same and deliver the certificates therefor to it, under and subject to this indenture, and may make such other arrangements as may be necessary for the protection of the trust hereby created.

Voting of shares of stock pledged hereunder.

SECTION 3. Unless and until an event of default (as hereinafter in Section 1 of Article VIII defined) shall happen and be continuing, the Promisors shall have the right to vote upon or consent with respect to all shares of stock at the time pledged hereunder, for all purposes not contrary to the covenants herein contained or otherwise inconsistent with the provisions or purposes of this indenture, with the same force and effect as though such shares were not subject to this indenture. From time to time (until the happening of an event of default, as aforesaid) upon the written request of the Promisors the Trustee or the Trustees shall execute and deliver, or cause to be executed and delivered, to the Promisors, or to their nominee or nominees, suitable powers of attorney or proxies to vote upon and give any consent in respect of such shares of stock, which proxies shall contain upon their face such restrictions as in the opinion of the Trustee or the Trustees may be necessary to carry out the provisions of this indenture, including the covenants and agreements of the Promisors contained in paragraph (m) of Section 1 of Article II of this indenture and in this section. In case the laws of any state or country under which any corporation whose shares of stock

are pledged hereunder shall be organized, or the by-laws of any such corporation made pursuant thereto, shall require the deposit of the certificates of such stock, and the issuance of any receipt or other evidence of deposit or ownership, or the right to vote upon or give any consent in respect of such stock, then the Trustee (no event of default hereunder having happened and being continuing as aforesaid) may either itself become the depositary, and as such issue the proper receipt or receipts, or make deposit of certificates with any bank or trust company approved by the Trustee, and obtain against such deposit a proper receipt or receipts, which receipt or receipts in either case shall, under such reasonable restrictions as the Trustee may impose, be delivered as the Promisors or any one of them shall in writing direct, to the end that the Promisors may exercise such right to vote or give consent.

Application of dividends upon pledged shares of stock.

SECTION 4. Unless and until an event of default (as hereinafter in Section 1 of Article VIII of this indenture defined) shall happen and be continuing, and except as hereinafter otherwise provided, the Promisors shall be entitled to receive any cash dividend which may from time to time be declared and paid upon shares of stock pledged hereunder, although such may have been transferred into the name of the Trustee or a nominee or nominees of the Trustee, and the Trustee shall be entitled to assume that any dividend received in money is paid out of the revenue, income or proceeds of the operation of the corporation declaring such dividend, and not upon the dissolution or liquidation of such corporation or upon a reduction of its capital stock, unless the Trustee shall be notified in writing to the contrary. Any sum which shall be paid to the Trustee or Trustees on a dissolution or liquidation of any corporation, any of the stock of which is pledged hereunder, or upon the reduction of the capital stock of any such corporation, any of the stock of which is pledged

hereunder, as a dividend on the shares of stock of such company, shall be held by the Trustee for the payment of the principal of the notes issued hereunder and be applied toward the payment of such principal when it becomes due, or at the option of the Promisors shall be applied by the Trustee to the purchase in the open market or in such manner as the Trustee may determine of notes issued under this indenture at a price not exceeding the price at which said notes may at the next ensuing interest date be redeemable, and in the event the notes cannot be purchased at such price to exhaust such sum, then at the election of the Promisors, such amounts as may not exhaust said sum may be used for the redemption of notes in the manner provided in Article IV of this indenture. Any notes issued under this indenture when so purchased shall be canceled by the Trustee and delivered to the Promisors.

SECTION 5. Unless and until an event of default (as hereinafter in Section 1 of Article VIII of this indenture defined) shall happen and be continuing—

Merger or consolidation of Controlled Companies.

(a) Any of the Controlled Companies may be merged or consolidated with any other Controlled Company, or all or any part of the property of any such Controlled Company may be sold or leased to any other Controlled Company, whether now existing or hereafter organized, provided that there are pledged under this indenture all of the shares of stock of each of said companies or of the company resulting from such merger or consolidation, except such shares as may be necessary to qualify directors; and upon request of the Promisors, the Trustee is authorized in its discretion to consent to all acts proper to carry into effect the purposes of this paragraph.

Amendments or alterations of charters or by-laws of Controlled Companies, and increase or decrease of stock of such companies.

(b) The Promisors may elect to vote for the amendment or alteration of the articles of association, certificate of incorporation or by-laws of any Controlled Company in all respects which shall not be disapproved by the Trustee as detrimental to the holders of the notes hereby secured, or for the increase or reduction of the capital stock of any such Controlled Company, provided that in case such stock be increased through or by a

stock dividend, the pro rata share of such increased stock to which the Promisors shall be entitled shall be delivered to the Trustee and be included in the securities pledged hereunder; and provided, also, that in case of the reduction of such stock, the pro rata share of such stock as reduced to which the Promisors shall be entitled, shall remain included in the securities pledged hereunder, and that the remainder thereof shall be surrendered for cancellation; and any sum or sums of money or other thing of value to which the Promisors may be entitled upon any distribution of assets of such corporation by reason of such reduction of stock shall be deposited with the Trustee to be held by it and applied as hereinbefore in Section 4 of Article III provided.

Release of pledged securities.

(c) The Trustee shall from time to time release from the lien hereof and surrender to the Promisors or upon their written order any of the securities pledged hereunder upon there being delivered to it a certificate signed by the Promisors or their agent duly authorized thereunto requesting such release and delivery and setting forth that

In case of sale or exchange of pledged securities.

(1) The Promisors have sold or exchanged the shares of stock or other securities mentioned in such certificate then included in the trust estate and stating the proceeds realized or to be realized from such sale, or the amount and character of shares of stock, participation shares, trust certificates, certificate of interest, bonds, notes, or other securities, whether made or issued by one or more corporations, voluntary associations, trustees or otherwise, which have been or are to be received in exchange therefor; or

In case of sale of all the property of a corporation.

(2) The physical property, franchises and assets of any corporation, any part of whose shares of stock is included in the trust estate which have been sold or exchanged as an entirety or substantially so, and stating the amount of the proceeds realized or to be realized from such sale, or the amount and character of the bonds, notes, shares of stock, participation shares, trust certificates, certificates of indebtedness or other securities, whether made or issued by one or more corporations, voluntary associations, trustees or otherwise which have been or are to be received in exchange therefor, or

(3) Any corporation any of whose shares of stock are included in the trust estate has been merged with or consolidated with or sold to any other such corporation whether now existing or hereafter organized, stating the terms of such merger and consolidation or sale in so far as the same shall relate to such securities in the trust estate.

In case of merger or consolidation.

Provided that in every such case there shall be filed with the Trustee a certificate consenting thereto signed by a Vice President of the Continental and Commercial Trust and Savings Bank, Chicago, and a Vice President of the First National Bank in St. Louis and that thereupon the Trustee shall surrender to the Promisors or upon their written order, any of the securities pledged hereunder, and that there shall be delivered to the Trustee to be held as part of the securities pledged hereunder the proceeds of any sale or the bonds, notes,. or shares of stock, participation shares, trust certificates, certificates of interest or other securities, whether made or issued by corporations, voluntary associations, trustees or otherwise which have been or are to be received in exchange for the securities requested to be released or the shares of stock of the consolidated corporation and other bonds, notes, participation shares, trust certificates, certificates of interest or other securities applicable to or received for the shares of stock then requested to be released, in every case as may be specified in the certificate of said Promisors or their agents. The Trustee shall incur no liability whatsoever in respect to any action or step taken by it under the provision of this section which is believed in good faith to be authorized or directed by the Promisors, and consented to as aforesaid.

Consent to releases.

Substitution of other securities, etc., for released securities.

SECTION 6. Anything in this indenture to the contrary notwithstanding, neither the shares of stock nor obligations of any of the Controlled Companies nor the physical property, franchises and assets of any of such companies as an entirety or substantially so, shall be sold, exchanged or released from the lien of this indenture, nor shall any Controlled Company be merged or consolidated with any corporation whatsoever except as follows:

Prohibition of sale, exchange or release of stock or all property of Controlled Companies except as herein provided.

(a) Upon such terms as the Trustees in their discre-

tion and without liability for the exercise of such discretion may determine to be for the best interests of the Promisors and the holders of the notes issued hereunder; or

(b) The shares of stock or the physical property, franchises and assets aforesaid, may, with the written consent of the Trustees in their discretion, be sold or exchanged in consideration of the shares of stock, participation shares, trust certificates or certificates of interest of a corporation or corporations, voluntary association or associations, trustees or otherwise, a proportion of whose entire outstanding shares or certificates equal to the proportion of the shares now held by the Promisors or by one or more of the Controlled Companies in the companies whose shares of stock, physical properties, franchises and assets are so sold, exchanged or released, shall under the provisions of Section 5 of this Article III forthwith upon the consummation of such sale, exchange or release become a part of the trust estate; or

(c) The obligations aforesaid may, with the written consent of the Trustees in their discretion, be sold, exchanged or released in consideration of obligations of like tenor and amount (subject to like covenants and conditions and secured by like securities) of a corporation or corporations, voluntary association or associations, trustees or otherwise whose shares of stock shall, in the proportions and in the manner in paragraph (b) of this Section 6 above provided be or become subject to this indenture; or

(d) Any Controlled Company may, with the written consent of the Trustees in their discretion, merge or consolidate with any corporation whatsoever provided that the shares of stock of the corporation resulting from such merger or consolidation shall in the proportions, and in the manner in paragraph (b) of this Section 6 be or become subject to this indenture.

Release of pledged securities for cash or other securities.

SECTION 7. Unless and until there be an event of default, (as defined in Section 1 of Article VIII of this indenture), the Promisors may at any time, and from time to time, upon depositing cash or other securities, as hereinafter provided, with the Trustee, in lieu of or in exchange for any securities held by the Trustee hereunder, withdraw from the pledge

hereunder, and it shall thereupon be the duty of the Trustee to deliver, upon the written order of a majority of the Promisors, such securities as they may specify, provided such written order shall be accompanied by

(1) A certificate of Continental and Commercial Trust and Savings Bank, of Chicago, Illinois, and First National Bank in St. Louis, signed for each by one of its Vice Presidents, consenting to such release, and certifying to the amounts of money or the amounts and character of other securities that must be deposited and pledged hereunder with the Trustee in order to secure such release; and

(2) A statement signed and sworn to by one of the Promisors, declaring that the market value, and also the actual value, of the securities desired to be withdrawn does not exceed the sum or sums of money to be deposited with the Trustee to take the place of the securities so desired to be withdrawn (or, in event that securities instead of cash are deposited, the market and also the actual value of the securities to be substituted for the securities desired to be withdrawn), and further stating that the Promisors are not in default in respect to any covenant or obligation in this indenture or in said notes and coupons contained; and

(3) Cash equal in amount, and securities of the amount and character specified in the certificate of said Continental and Commercial Trust and Savings Bank and said First National Bank in St. Louis to be deposited in order to secure said release of the securities so desired to be withdrawn.

Liability of Trustee as to releases.

The Trustee shall be under no responsibility as to the value or disposition of the securities withdrawn, but shall be fully protected in delivering said securities upon receipt by it of the certificates and orders aforesaid, and of the sum or sums of money or other securities therein specified as necessary to be deposited in order to secure such release. Such cash so deposited shall be held by the Trustee as part of the Trust estate, and, at the option of the Promisors, and with the consent of the Trustee, may be applied by the Trustee to the purchase in the open market of outstanding notes, at a price not

more than the amount required to be paid at such time for the redemption of outstanding notes, and in event sufficient notes cannot be thus purchased to exhaust said cash funds the Promisors may, with the consent of the Trustee, use any balance of said moneys not used for the purchase of notes toward the redemption of outstanding notes, in the manner provided in Section 1 of Article IV of this indenture.

Partial releases of pledged securities on payment of part of notes.

SECTION 8. Unless and until there be an event of default as specified in Section 1 of Article VIII of this indenture, the Promisors shall be entitled to have released from the lien of this indenture, and redelivered to them by the Trustee, from time to time, as outstanding notes are called for redemption and paid or provision made for the payment thereof, such proportionate amounts of securities pledged hereunder as may be determined and specified in a certificate of Continental and Commercial Trust and Savings Bank, of Chicago, and First National Bank in St. Louis, of St. Louis, signed for each by one of its Vice Presidents.

Liability of Trustee as to releases.

SECTION 9. The Trustee shall not be liable for any releases of securities improvidently made by it under the terms of this Article, but shall in all respects be released from all liability whatsoever with respect to such releases upon having received the orders, certificates and requests referred to in this Article, and upon proof having been made to it of the payment or provision for payment of notes issued under this indenture, as specified in such orders and requests.

General powers of Trustee with respect to pledged securities and protection thereof.

SECTION 10. The Trustees (or either of them) may at any time take such steps as in their discretion they shall deem advisable to protect their interests and the interests of the note holders hereunder in respect of any shares of stock comprising any part of the trust estate and may join in any plan of reorganization or readjustment in respect of any such shares of stock and may accept new stocks or other securities issued in exchange

therefor on reorganization and readjustment. Any new stocks or other securities so received shall be held by the Trustee subject to the lien and provisions of this indenture, but all the provisions herein contained shall be applicable to such new stocks and other securities in like manner as the shares of stock in exchange for which they were issued.

ARTICLE IV.

REDEMPTION OF NOTES.

Redemption of notes.

SECTION 1. Unless and until there shall be an event of default as defined in Section 1 of Article VIII of this indenture, the Promisors at their option may redeem any or all of the notes at any time outstanding hereunder in advance of their maturity at any interest payment date by paying the principal amount of such notes and accrued interest thereon to such interest payment date and a premium upon said principal of the following amounts on notes called for redemption and payment in the following years, viz.: In 1920, two and one-half per cent; 1921, two per cent; 1922, one and one-half per cent; 1923, one per cent; 1924, one-half per cent; 1925, no premium. The Promisors shall not less than thirty-five (35) days before the date upon which any notes shall be redeemed notify the Trustee of the principal amount of notes desired to be redeemed, and if the principal amount of notes to be redeemed be less than the total outstanding notes, the Trustee shall choose by lot in any manner by it deemed proper, the notes to be redeemed, and thereupon notice shall be given by the Trustee to the holder or holders of the notes so-called for redemption, by advertisement to be published at least once a week for at least three consecutive weeks in a daily newspaper of general circulation published in Chicago, Illinois, and in a daily newspaper of general circulation published in New York City, New York and in a daily newspaper of general circulation published in Boston, Massachusetts, and

Premium.

Notice of redemption.

in a daily newspaper of general circulation published in St. Louis, Missouri, the first publication of such notice in each case to be at least twenty-five (25) days before the date fixed for such redemption. Such notice shall state the date the Promisors intend to redeem said notes and the numbers of the notes so called for redemption and that upon and after the date given in said notice and upon the deposit with the Trustee of money sufficient to pay said notes and coupons, all interest on notes so called for redemption shall cease. Upon depositing with the Trustee moneys sufficient to pay such notes and coupons so called for redemption, said notes and coupons shall be excluded from participation in the lien of any security afforded by this indenture, and the holders of said notes and coupons shall look for the payment thereof only to the sums so deposited with the Trustee and in no event to the Promisors. Said sums so deposited shall be held by the Trustee to the credit of and for the payment of such notes and coupons, and shall be paid by the Trustee to the holders thereof upon presentation and surrender of said notes together with the outstanding coupons thereunto belonging. The Trustee may arrange for the payment of said notes so called for redemption in such manner as it may deem proper with the banks at which the principal and interest of said notes are payable in the City of New York, in the City of Boston and in the City of St. Louis.

Payment of notes called for redemption.

Cancellation and surrender of redeemed or paid notes.

SECTION 2. All notes paid or redeemed under the provisions of this Article together with all coupons belonging thereto upon payment thereof shall be canceled by or for the Trustee and surrendered to the Promisors.

Sufficiency of notice.

SECTION 3. In event any question shall arise as to whether any notice provided for in this Article IV has been given, such question shall be decided by the Trustee, whose decision shall be final and binding upon all parties in interest.

SECTION 4. On deposit with the Trustee of a sufficient sum to redeem and pay all the notes issued under this indenture and then outstanding, as hereinabove provided, and after arranging to the satisfaction of the Trustee for the publication and giving of the notice of redemption as required by this Article, and after payment to the Trustee and Co-Trustee of their reasonable compensation, expenses and disbursements, the Trustee shall transfer and surrender to the Promisors all of the trust estate then held by it under the terms of this indenture, and this indenture shall be forthwith canceled, as fully and to the same effect as if the total issue of said notes and coupons had been duly paid by the Promisors.

Release of trust estate upon deposit of funds with Trustee for payment or redemption of notes.

SECTION 5. In case any of the notes or coupons are not presented for payment within three years after the maturity of said notes, the Trustee shall repay to the Promisors the balance of said sum so deposited then remaining in its hands by reason of the nonpresentation of said notes and coupons, upon receiving from the Promisors security satisfactory to the Trustee for the payment of such notes and coupons as may thereafter be presented for payment.

Return of funds not used for payment of notes within three years.

ARTICLE V.

INDIVIDUAL IMMUNITY OF PROMISORS, EXECUTIVE COMMITTEE, AND HOLDERS OF PARTICIPATION CERTIFICATES.

Release of individual liability of Promisors, executive committee, and holders of participation certificates.

Anything to the contrary herein notwithstanding, it is expressly understood and agreed that this indenture and the notes issued hereunder are executed by the Promisors not individually, but as trustees under the Agreement and Declaration of Trust hereinbefore mentioned dated as of April 26, 1920, to which reference is hereby made, and that any and all liability of the Promisors shall be expressly strictly limited to the application and distribution, in accordance with the provisions of said Agreement and Declaration of Trust, and of this indenture, of the property from time to

time constituting the trust estate under said Agreement and Declaration of Trust, and the trust estate under this indenture, and any and all personal liability of the Promisors (except as aforesaid), the executive committee, and the shareholders and all beneficiaries under said Agreement and Declaration of Trust, is, by the acceptance of said notes and as a consideration for the issue and execution thereof and of this indenture, expressly waived by the holders of any and all notes issued hereunder; it being further understood and agreed that the payment of the principal of and the interest on said notes shall only be sought for and enforcible against and collectible out of the property from time to time constituting the trust estate created by said Agreement and Declaration of Trust and the trust estate under this indenture.

ARTICLE VI.

RIGHTS OF NOTE HOLDERS.

Rights of action vested in Trustees.

SECTION 1. No holder of any note or coupon hereby secured shall have any right to institute any action or proceeding in equity or at law for foreclosure, under the terms of this indenture, or for the execution of any trust hereof, or for the appointment of a receiver, or for any other remedy hereunder, unless such holder previously shall have given to the Trustees written notice of default hereunder and of the continuance thereof, as hereinafter provided, or unless also the holders of not less than twenty-five per cent (25%) in amount of the notes hereby secured and then outstanding shall have made written request upon the Trustees and shall have afforded to them (or either of them) a reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in their own name, or unless also they shall have offered to the Trustees adequate security and indemnity against the

costs, expenses and liabilities to be incurred therein or thereby; and such notice, request and offer of indemnity are hereby declared in every case at the option of the Trustees to be condition precedent to the execution of the powers and trusts of this indenture, and to any action or cause of action for foreclosure or for the appointment of a receiver, or for any other remedy hereunder; it being understood and intended that no one or more holders of notes or coupons shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the lien of this indenture, or to enforce any right hereunder, except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all holders of such outstanding notes and coupons.

Proof of execution of instruments by note holders.

Section 2. Any request, direction or other instrument required by this indenture to be signed and executed by note holders may be in any number of concurrent writings of similar tenor, and may be signed or executed by such note holders in person or by attorney appointed in writing. Proof of the execution of any such request, direction or other instrument, or of the writing appointing any such attorney, and of the ownership of unregistered notes, if made in the following manner, shall in the discretion of the Trustees (or either of them) be sufficient for any purpose of this indenture, and shall be conclusive in favor of the Trustees and of the Promisors, with regard to any action taken or not taken by them, or any of them, under such instructions, to wit:

(a) The fact and date of the execution by any person of any such writing may be proved by the certificate of any notary public or other officer in any jurisdiction who by the laws thereof has power to take acknowledgments within said jurisdiction, that the person signing such writing did acknowledge before him the execution thereof;

(b) The fact of the holding by any holder of notes transferable by delivery, and the amounts and issue

numbers of such notes, and the date of his holding the same, may be proved by a certificate executed by any trust company, bank, bankers, or other depositary (wherever situated), if such certificate shall be deemed by the Trustee to be satisfactory, showing that at the date therein mentioned such person had on deposit with such trust company, bank, bankers, or other depositary, the notes described in such certificate;

(c) The ownership of registered coupon notes shall be proved by the registers of said notes.

Powers of note holders as to releases, waivers and modification of trust indenture.

SECTION 3. From time to time the holders of two-thirds in principal amount of all of the notes hereby secured and at the time outstanding, by their votes at a meeting of note holders called by the Trustees, on such notice as the Trustees may deem sufficient, or by an instrument or instruments in writing by such holders signed, shall have power, with the written approval of the Trustees—

(a) To assent to and authorize the release of any part of the property mentioned herein and conveyed to or held by the Trustees (or either of them) hereunder, under other terms than those herein expressed;

(b) To assent to and authorize any modification or compromise of the rights of the note holders and of the Trustees against the Promisors or against the trust estate or any part thereof, whether such right shall arise under this indenture or otherwise; and

(c) To assent to and authorize any modification of the provisions of this indenture that shall be proposed by the Promisors and recommended by the Trustees.

Any action taken with the assent or authority given as aforesaid shall be binding upon the holders of all of the notes issued hereunder and then outstanding, and upon the Trustees, as fully as though such action were specifically and expressly authorized by the terms and conditions of this indenture.

ARTICLE VII.

POWERS OF THE PROMISORS.

Authorization of one of the Promisors to act for all of the Promisors and appointment of agents of the Promisors.

SECTION 1. From time to time the Promisors, as Trustees under the said Agreement and Declaration of Trust dated as of April 26, 1920, may execute and file with the Trustee a writing appointing any person or persons or any copartnership or corporation the agent or agents of the Promisors under such designation as they may determine and specify, or any one of the Promisors, in the name, place and stead of all of the Promisors, to sign any note or coupon to be issued under this indenture, or to sign any order or authority to deliver any such note, when authenticated, or to sign any other order or authority which the Promisors themselves might sign; and thereupon the Trustee shall be authorized to authenticate any note or notes authorized to be issued hereunder, which shall have been signed by such agent or agents in the name of the Promisors, and to deliver any such note, when authenticated, upon the order in writing of such agent or agents, or to release and surrender any or all of the securities pledged hereunder, or to do and perform any act or to take any proceedings which pursuant to the provisions of this indenture the Trustee or Co-Trustee is authorized to perform or to take, upon the written order of the Promisors.

Revocation of appointment of agents, etc., and substitution.

SECTION 2. From time to time the Promisors may revoke any such appointment previously made, and may appoint a substitute or substitutes, with like power and authority; but no such revocation shall operate to annul or in anywise to affect any act or proceeding done or taken by any agent or agents or one of the Promisors previous to such revocation of authority and service of notice in writing thereof upon the Trustee, or shall operate to annul or in anywise to affect any act or proceeding done or taken by the Trustee

or Co-Trustee pursuant to the order of any agent or agents or one of the Promisors appointed as provided in this Article, of the revocation of whose authority notice in writing shall not have been given to the Trustee as aforesaid.

Effect of death of a Promisor.

SECTION 3. The death of the Promisors or any of them, or of any successors to them, shall not operate to revoke any agency or appointment created or made pursuant to the provisions of this Article.

Definition of Promisors.

SECTION 4. For every purpose of this indenture, including the execution, issue and use of any and all notes hereby secured, the term "Promisors" includes and means not only the parties of the first part hereto, but also their successors as trustees under the said Agreement and Declaration of Trust dated as of April 26, 1920, and the survivor or survivors of them. Such successor and such survivor or survivors shall possess, and from time to time may exercise each and every right and power hereunder of the Promisors, in the name of the Promisors, or of the said successor, survivor or survivors.

Successor Trustees under trust agreement creating Associated Simmons Hardware Companies.

SECTION 5. Whenever any trustee shall cease to act as such under the said Agreement and Declaration of Trust dated as of April 26, 1920, he shall without any further act cease to be a Promisor hereunder, and the election of any successor trustee under said Agreement and Declaration of Trust dated as of April 26, 1920, shall, without any further act, constitute such successor a Promisor hereunder, as if herein specifically mentioned as one of the parties of the first part.

Sufficiency of notice to Promisors.

SECTION 6. Any notice by this indenture authorized to be given to the Promisors shall be sufficiently given for all purposes hereof if addressed by mail to the Promisors at their office or agency last known to the Trustee, or to such office or agency as the Promisors in writing shall designate to the Trustee.

Liability of Trustees.

SECTION 7. Neither the Trustee nor the Co-Trustee shall incur any liability whatever in respect to any action or step taken by it in good faith under the provisions of this Article.

ARTICLE VIII.

RIGHTS AND REMEDIES IN EVENT OF DEFAULT.

Events of default.

SECTION 1. In case any one or more of the following events of default shall occur (herein called *events of default*)—that is to say:

(a) Default shall be made in the due and punctual payment of any interest on any notes hereby secured and outstanding when and as the same become payable as therein and herein expressed and any such default shall continue for a period of thirty (30) days; or

(b) Default shall be made in the payment of the principal of any of the notes hereby secured when and as the same become due and payable either by the terms thereof or by declaration of maturity or otherwise; or,

(c) Default shall be made in the due observance and performance of any other covenant or condition herein required to be kept or performed by the Promisors and any such last-mentioned default shall continue for a period of thirty (30) days after written notice thereof to the Promisors from the Trustee; or,

(d) Any of the Controlled Companies shall become insolvent or bankrupt or shall go into liquidation, either voluntarily (except with the consent of the Trustees) or involuntarily, or shall make a general assignment for the benefit of creditors; or

(e) A receiver of any of the Controlled Companies or of its properties shall have been appointed; or

(f) A judgment or order shall be entered for the sequestration of any of the property of a Controlled Company or of the Promisors, and bond for release thereof shall not be given within sixty (60) days after demand by the Trustees (or either of them), or there shall be any existing judgment against the Promisors or a Controlled Company unsatisfied by appeal bond or otherwise for sixty (60) days after demand or notice from the Trustees (or either of them).

Declaration of maturity of outstanding notes.

Then and in every such case, the Trustee may in its discretion, and upon the written request of the holders of not less than twenty-five per cent (25%) in amount of the notes then outstanding shall, by notice in writing delivered to the Promisors or any one of them, declare the principal of all the notes then outstanding hereunder to be due and payable immediately; and upon such declaration the same shall become and be immediately due and payable, anything in this indenture or in said notes to the contrary notwithstanding. This provision, however, is subject to the condition that if at any time after the principal of the notes shall so become due and payable, and prior to the date of the maturity thereof stated in the notes, and prior also to the sale of any of the securities constituting the trust estate, all arrears of interest upon the notes, with interest at the rate of seven per cent per annum on any overdue installment of interest and expenses of the Trustees, shall be paid by the Promisors and every other default in the observance or performance of any other covenant or condition of the notes or of this indenture, shall be made good or be secured to the satisfaction of the Trustee, and provision deemed by the Trustee to be adequate shall be made therefor, then in every such case the holders of a majority in amount of the notes then outstanding, by written notice to the Promisors and to the Trustee may waive the default by reason of which the principal of the notes shall have become due and the consequences of such default, but no such waiver shall extend to or affect any subsequent default, nor impair any right consequent thereon.

Voting of pledged stock and collection of dividends thereon in event of default.

SECTION 2. If any one or more of the *events of default* shall happen, then in every such case the Trustee shall be entitled during the continuances thereof to vote upon or consent or act with respect to all shares of stock then subject to this indenture, and for the benefit of the holders of the notes hereby secured shall be entitled to collect and receive all dividends upon all such shares of stock and sums payable for

principal, interest or otherwise upon any other securities that shall then be subject to this indenture, and to apply the same as provided in Section 4 of Article VIII of this indenture with respect to the application of the proceeds of a sale of the trust estate; and as holder of any such shares of stock and of any other securities the Trustee shall be entitled to perform any and all acts and to make, execute and deliver any and all transfers, requests, requisitions, or other instruments for the purpose of carrying out the provisions of this section.

Sale of trust estate in event of default.

SECTION 3. If any one or more of the *events of default* shall happen, then in every such case the Trustee in its discretion may, and upon the written request of the holders of not less than twenty-five per cent (25%) in amount of the notes at the time outstanding, and upon being properly indemnified as hereafter provided, shall, proceed forthwith to sell and convert into money singly or collectively all or any part of the securities, obligations or property constituting the trust estate; such sale or sales in the discretion of the Trustee may be at public auction at such place and at such time and upon such terms as the Trustee may fix, or may be at any regular brokers' board or stock exchange in the City of Chicago, Illinois, or in the City of New York, New York, or in the City of Boston, Massachusetts, or in the City of St. Louis, Missouri, and at any such sale the whole or any part of the securities constituting the trust estate may be sold. Notice of any sale at public auction whether under and by virtue of the power of sale herein contained or by virtue of judicial proceedings, or by any judgment or decree in judicial proceedings, or of any judgment or decree of foreclosure and sale shall state the time when and the place where the same is to be made and shall contain a brief general description of the property to be sold, and shall be published once in each week for four successive weeks prior to such sale in one or more daily newspapers

Place of sale.

Notice of sale.

published in the cities of Chicago, Illinois, St. Louis, Missouri, Boston, Massachusetts, and New York, New York, respectively. The Trustee may adjourn any such sale or cause the same to be adjourned from time to time by announcement at the time and place appointed for such sale, or for such adjourned sale or sales; and without further notice or publication, such sale may be made at the time and place to which the same shall be so adjourned. In case of any such sale of the whole or any part of the trust estate, the principal of the notes if not previously due shall become immediately due and payable, anything in said notes or in this indenture contained to the contrary notwithstanding. Upon the completion of any sale or sales the Trustee shall deliver to the accepted purchaser or purchasers the shares of stock or other property or securities sold, and may execute sufficient transfers thereof, and the Trustee and its successors are hereby appointed the true and lawful attorney or attorneys, irrevocably, of the Promisors, in their name and stead to make the necessary assignments, transfers and conveyances of the shares of stock or other securities thus sold, and may substitute one or more persons or corporations with like power, the Promisors hereby ratifying and confirming all that their said attorneys or said substitute or substitutes shall lawfully do by virtue hereof. The Co-Trustee shall also join in and execute with the Trustee any such assignments, transfers and conveyances, and the Promisors shall, if so requested by the Trustee, ratify and confirm such sale by executing and delivering to the Trustee or to such purchaser or purchasers such proper transfers as may be designated in such request.

Adjournment of sale.

Delivery of securities to purchaser.

Effect of sale. Any sale or sales made under or by virtue of this indenture, whether under any power of sale hereby granted and conferred, or under or by virtue of judicial proceedings, shall operate to divest all right, title, interest, estate, claim, and demand whatsoever either at law or in equity, of the Prom-

isors of, in and to all property so sold, and shall be a perpetual bar both at law and in equity against the Promisors, their successors and assigns, and against any and all persons claiming or to claim the property so sold, or any part thereof, from, through or under the Promisors, their successors or assigns; and no purchaser at any such sale or sales or his representatives or assigns shall be bound to see to the application of the purchase money upon or for any trust or purpose of this indenture, or be answerable in any manner whatsoever for any loss, misapplication or nonapplication of any such purchase money paid by him or any part thereof. The Trustee, however, instead of exercising the power of sale herein conferred, may in its discretion and shall, at the request in writing of the holders of a majority in amount of the notes then outstanding, proceed by suit or suits at law or in equity, as it may be advised by counsel, to enforce the payment of the notes, and to foreclose this indenture and to effect the sale of the assets constituting the trust estate under a judgment or decree of a court or courts of competent jurisdiction.

Proceeding by suit and foreclosure.

SECTION 4. In case of any sale of the trust estate or any part thereof whether under the power of sale hereby granted or pursuant to judicial proceedings, the purchase money, proceeds or avails together with any other sums which may then be held by the Trustees or be payable to them under any of the provisions of this indenture as part of trust estate shall be applied as follows:

Application of proceeds of sale of trust estate.

First. To the payment of the costs, expenses, fees and other charges of such sale or sales and the reasonable compensation of the Trustees, their agents, attorneys and counsel, and to the payment of all expenses and liabilities and advances made or incurred by the Trustees, and to the payment of all taxes, assessments or liens prior to the lien of this indenture, except any taxes, assessments or other superior liens subject to which such sales shall have been made;

Second. Any surplus then remaining, to the payment

of the whole amount owing and unpaid on the principal and interest of the notes with interest on the principal from date of maturity and on the overdue installments of interest at the rate of seven per cent per annum, and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the notes, then to the payment of such principal and interest, ratably according to the aggregate of such principal and unpaid interest without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, subject, however, to the provisions of paragraph (e) of Section 1 of Article II of this indenture; and

Third. Any surplus then remaining, to the Promisors, their successors or assigns, or whomsoever may be lawfully entitled to receive the same.

Application of notes in payment of purchase price by purchaser.

SECTION 5. In case of any sale of the trust estate or any part thereof, the purchaser, for the purpose of making settlement or payment for the property purchased, shall be entitled to turn in or apply toward the payment of the purchase price and to be credited with, any notes to the extent of the distributive share payable upon such notes, upon a distribution among the note holders of the net proceeds of such sale, after making the deductions allowable under the terms hereof for the costs and expenses of sale and otherwise, but such notes so applied in payment by the purchasers shall be deemed to be paid only to the extent so applied. At any such sale the Trustee or Co-Trustee or any note holders or their agents may bid for and purchase the property so sold, and may make payment therefor as aforesaid, and, upon compliance with the terms of sale, may hold, retain or dispose of said property, without further accountability; and the receipt of the Trustee shall be a sufficient discharge for the purchase money to any purchaser of the property or any part thereof sold under any of the provisions of this indenture.

Trustees or note holders may become purchasers at sale.

Promisors to pay amount due in event of default.

SECTION 6. In case of the happening of one or more of the *events of default,* the Promisors upon demand of the Trustee shall pay to the Trustee, for the benefit of the holders

of the notes then outstanding, the whole amount then due and payable on all such notes for principal and interest, or both, as the case may be, with interest as aforesaid upon the overdue principal and installments of interest; and in case the Promisors shall fail to pay the same forthwith upon such demand, the Trustee in its own name and as trustee of an express trust shall be entitled to recover judgment for the whole amount so due and unpaid. The Trustee shall be entitled to recover judgment as aforesaid either before or after, or during the pendency of any proceeding for the enforcement of the lien of this indenture, upon the trust estate, and the right to recover such judgment shall not be affected by any sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this indenture, or by the foreclosure of the lien hereof; and in case of a sale of the trust estate, or any part thereof, and of the application of the proceeds of sale to the payment of the indebtedness represented by the notes, the Trustee in its own name, and as the Trustee of an express trust shall be entitled to receive and to enforce payment of any and all deficiency or amounts then remaining due and unpaid upon any or all of the notes then outstanding, for the benefit of the holders thereof, and shall be entitled to recover judgment for any portion of said indebtedness remaining unpaid, with interest. No recovery of any judgment by the Trustee, and no levy of any execution under any such judgment upon property subject to the lien of this indenture, or upon any other property, shall in any manner or to any extent affect or impair the lien of the Trustee or Trustees upon the trust estate, or any part thereof, or any right, powers or remedies of the Trustee or Trustees hereunder, or any right, powers or remedies of the holders of the notes; but such lien, right, powers and remedies shall continue unaffected and unimpaired as before. Any moneys thus collected by the Trus-

Trustee may recover judgment as trustee of an express trust.

Application of moneys collected by Trustee.

tee under this Section shall be applied by the Trustee, *first,* to the payment, at the option of the Trustee, of the costs and expenses of the proceeding resulting in the collection of such moneys, including the Trustee's own compensation and expenses and liabilities incurred; and *second,* toward payment of the amount then due and unpaid upon the notes respectively for principal and interest, without any preference or priority of any kind, but ratably as aforesaid, according to the amounts so due and payable upon such notes respectively at the date fixed by the Trustee for the distribution of such moneys, but subject to the provisions of paragraph (e) of Section 1 of Article II of this indenture.

Trustee may act without Co-Trustee.

The Trustee may act under this Section without any joinder by the Co-Trustee, and in taking action hereunder shall be deemed to be acting for and on behalf of the holders of all the notes outstanding hereunder, and shall not be required to produce said notes in any proceeding or action taken hereunder.

Waiver of valuation, stay and redemption laws.

Section 7. The Promisors will not at any time insist upon or plead or in any manner whatever claim or take the benefit or advantage of any stay or extension law now or at any time hereafter in force, nor will they claim, take or insist upon any default or advantage of any law now or hereafter in force providing for valuation or appraisement of the securities pledged hereunder, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to the decree, judgment or order of any court of competent jurisdiction; nor after any such sale or sales will they claim or exercise any right under any statute now in force or hereafter enacted by any state or otherwise, to redeem the property so sold or any part thereof; and they hereby expressly waive all benefit and advantage of any such law or laws; and they covenant that they will not hinder, delay or impede the execution of any power herein granted or delegated to the Trustee or Trus-

tees, but that they will suffer and permit the execution of any such power, as though no such law or laws had been made or enacted; and the Promisors expressly waive any requirement of any law with respect to the jurisdiction of any court in which any action may be taken against them for the purpose of enforcing the provisions of said notes or this indenture, and consent and agree that such action may be taken in any court where jurisdiction over or service upon any one of them may be secured and waive all objections to the jurisdiction of such court and agree to enter such waiver of jurisdiction in any such proceeding and in the absence of the filing of any such waiver agree and consent that this indenture shall be deemed to be such waiver, and also consent and agree and hereby authorize the Trustee to designate any attorney, as their true and lawful attorney to enter and file such waiver.

Waiver of jurisdiction of courts.

Section 8. No delay or omission of the Trustees (or either of them), or of any note holder, to exercise any right or power accruing upon any *event of default* shall impair any such right or power, or be construed to be a waiver of any such default, or an acquiescence therein, or extend to any subsequent default; and every power or remedy given by this Article to the Trustee (or either of them), or to the holders of the notes, may be exercised from time to time, and as often as may be deemed expedient, by the Trustees (or either of them) or by the holders of the notes.

Delay, etc., not a waiver of defaults.

Section 9. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the Trustees (or either of them) or to the holders of notes issued hereunder is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Remedies not exclusive but cumulative.

Restoration of rights of Trustees in event of discontinuance of proceedings or adverse rulings therein.

SECTION 10. In event the Trustees (or either of them) shall proceed to enforce any right under this indenture by suit, or howsoever, and such proceedings shall have been discontinued or shall have been determined adversely to the Trustees (or either of them), then and in every such case the Promisors and the Trustees shall be restored to their former positions and rights hereunder in respect to the trust estate, and all rights, remedies and powers of the Trustees shall continue as through such proceeding had not been taken.

ARTICLE IX.

THE TRUSTEES.

Conditions of acceptance of trusts by Trustees.

SECTION 1. The Trustees, for themselves and their several successors, hereby accept the trusts and assume the duties herein created, and imposed upon them, but only upon the following terms and conditions, to which the Promisors and note holders severally agree:

Not responsible for —recitals in notes and indenture.

(a) The recitals of fact and the covenants and agreements in this indenture and in said notes contained shall not be construed as made by the Trustees nor shall they be accountable with respect thereto.

—execution, validity or sufficiency of notes and indenture.

(b) The Trustees shall not be accountable for the execution or validity hereof nor of the notes issued hereunder, nor for the sufficiency of the security provided herein, nor for the genuineness, validity or value of any securities which may any time become subject to this indenture.

—for recordation, etc.

(c) The Trustees shall be under no duty to file or record or cause to be filed or recorded this or any supplemental or additional instruments as a mortgage, conveyance or transfer of property, or otherwise, or to refile or re-record or renew the same, or to procure any further, other, or additional instruments of further assurance, or to do any other act which may be suitable to be done for the better maintenance or continuance of the lien or security hereof, or for giving notice of the existence of such lien, or for extending or supplementing the same.

(d) The Trustees shall be under no responsibility or duty in respect of the disposition of the notes issued hereunder or the application of the proceeds thereof. —for application proceeds of notes.

(e) The Trustees may execute any of the trusts or powers hereof and perform any duty hereunder by or through attorneys, agents or employees, and shall not be answerable or accountable for any act, default, neglect or misconduct of any such attorneys, agents or employees. —for acts of agents, etc.

(f) The Trustees shall be under no obligation or duty to perform any act hereunder or to institute or defend any suit in respect hereof, unless reasonably indemnified to their satisfaction. The Trustees shall not be required to ascertain or inquire as to the performance of any of the covenants or agreements on the part of the Promisors, and shall not be required to take notice, or be deemed to have knowledge, of any default of the Promisors hereunder, and may conclusively assume that there has been no such default until they shall have been specifically notified in writing of such default by the holders of not less than twenty-five per cent in amount of the notes then outstanding hereunder. Except as herein otherwise expressly provided the Trustees shall not be bound to recognize any person as the holder of a note issued hereunder unless and until his note is submitted to the Trustees for inspection, if required, and his title thereto satisfactorily established if disputed. —to institute or defend suits. —not bound to take notice of defaults, etc.

(g) The Trustees shall be protected in acting upon any notice, request, consent, certificate, note or other paper or document believed by them to be genuine and to have been signed by the party or parties purporting to sign the same. The Trustees may advise with legal counsel, including counsel of the Promisors, and any action under this indenture taken or suffered in good faith by the Trustees (or either of them), in accordance with the opinion of such counsel, shall be conclusive on the Promisors and on all holders of the notes and coupons hereby secured, and the Trustees shall be fully protected in respect thereof. —for acting upon documents, etc. —for acting in accordance with opinion of counsel.

(h) The Trustees shall not be liable for any error of judgment nor for any act done or step taken or omitted nor for any mistakes of fact or law, nor for anything which they may do or refrain from doing in good faith, nor generally shall they have any accountability here- —for errors, etc.

under except for their own willful default; and neither of the Trustees shall be liable or accountable for any act of the other.

Trustees may acquire notes, etc.

(i) The Trustees (or either of them) may acquire or hold notes and coupons issued hereunder with the same rights which they would have if they were not Trustees hereunder.

Trustees may treat moneys as general deposit.

(j) Any money received by the Trustees under any provision of this indenture may be treated by them until required to pay out the same conformably herewith, as a general deposit without any liability for interest.

Compensation of Trustees and payment of expenses of Trustees.

(k) The Promisors from time to time shall pay to the Trustees a reasonable compensation for all services rendered hereunder, and they shall also pay all the reasonable charges, counsel fees and other disbursements of the Trustees, and those of their attorneys, agents, and employees, incurred in and about the administration and execution of the trusts hereby created, and the performance of their powers and duties hereunder. In default of such payments by the Promisors, the Trustees shall have a lien therefor on the trust estate and the proceeds thereof paramount to the lien of the notes issued hereunder. The Trustees shall be reimbursed by the Promisors, and shall likewise have a paramount lien on the securities pledged hereunder, and the proceeds thereof, to indemnify and hold them harmless, against any liability, charge, assessment or expense they may sustain or incur in the premises, including debts contracted by them, and against the costs and expenses of defending against any alleged liability in the premises of any character whatsoever.

Resignation of Trustees.

SECTION 2. Either of the Trustees may resign, and be discharged from the trusts created by this indenture, by giving to the Promisors (or any one of them) and to the holders of the notes notice by publication of such resignation, specifying the date when it is desired that such resignation shall take effect, which notice shall be published at least once a week for not less than four successive weeks before the date so specified, in a daily newspaper of general circulation pub-

lished in each of the Cities of Chicago, St. Louis, Boston and New York. Written notice of such resignation shall be mailed by the Trustee so resigning to the other Trustee and to the Promisors or any one of them, at least twenty-five (25) days before it shall take effect. Such resignation shall take effect on the date specified in said notice, unless previously a successor trustee to the trustee so resigning shall be appointed, as hereinafter provided, in which event such resignation shall take effect immediately upon the appointment of such successor trustee.

Appointment of successor Trustees.

SECTION 3. In case at any time either of the Trustees shall resign, or otherwise shall become incapable of acting, a successor may be appointed by an instrument in writing, signed by a majority in amount of the holders of the notes at the time outstanding. Until a new successor Trustee to the Trustee so resigning shall be appointed by the holders of the notes as hereinafter authorized, the Promisors, by an instrument executed by a majority of them, may appoint a Trustee to fill such vacancy. The holders of more than fifty per cent in amount of the notes at the time outstanding may by written instrument executed by them designate and appoint a successor to any trustee which has resigned as a trustee hereunder. The successor to the Trustee herein named shall be the Trustee hereunder for the purposes of this indenture, and the successor to the Co-Trustee herein named shall be the Co-Trustee for the purposes of this indenture. Every such successor Trustee or Co-Trustee, whether appointed by such holders of notes or by the Promisors, shall always be a trust company having an office in the City of Chicago, Illinois, or having an office in the Borough of Manhattan, in the City of New York, or having an office in the City of St. Louis, Missouri, and having a capital and surplus aggregating at least Two Million Dollars ($2,000,000). Any new Trustee or Co-Trustee so appointed by the

Promisors shall immediately and without any further act be superseded by a Trustee or Co-Trustee appointed in the manner above provided by the holders of the notes.

Effect of merger or consolidation of Trustees.

SECTION 4. In the event that either the Trustee or Co-Trustee at any time merges or consolidates with any other corporation, the corporation resulting from such merger or consolidation shall be and become the Trustee or Co-Trustee respectively hereunder, without the execution or filing of any other paper or instrument, or the doing of any act on the part of any of the parties hereto, or the holders of the notes hereunder, anything herein contained to the contrary notwithstanding.

Rights, powers and duties of successor Trustees.

SECTION 5. Any successor Trustee or Co-Trustee appointed hereunder shall execute, acknowledge and deliver to the Promisors an instrument accepting such appointment hereunder, and thereupon such successor, without any further act, deed or transfer, shall become vested with the title to the trust estate, and with all the rights, powers, trusts, duties and obligations of its predecessor in trust hereunder, with like effect as if originally named as Trustee or Co-Trustee respectively herein; and the Trustee or Co-Trustee ceasing to act shall, on the written request of such successor assign or transfer the trust estate, or cause the trust estate to be assigned and transferred to such successor, and shall be entitled to the payment of its charges and expenses theretofore incurred. Upon request of such successor the Promisors shall execute and deliver such instrument of assignment, and further assurances as may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee or Co-Trustee all rights, title and interest of the predecessor Trustee or Co-Trustee in and to the trust estate. All conveyances and instruments herein provided for shall be at the cost and expense of the Promisors.

Powers and duties of Co-Trustee.

SECTION 6. First National Bank in St. Louis has been joined as Co-Trustee hereunder, so that if, by reason of any present or future laws in any jurisdiction in which it may be necessary to perform any act hereunder, the Continental and Commercial Trust and Savings Bank, the Trustee hereunder, or its successor, may be incompetent, or disqualified, or unwilling to act as sole Trustee hereunder, then all of the acts required herein to be performed in such jurisdiction shall and may be performed by the said Co-Trustee, or its successor, acting with said Trustee jointly, or severally. Except as may be deemed necessary for the Co-Trustee or its successor to execute the trusts hereof jointly with the Trustee or separately, the Continental and Commercial Trust and Savings Bank, as Trustee hereunder, or its successor, may solely have and exercise the powers, and shall be solely charged with the performance of the duties herein declared incumbent upon the Trustees. Any request in writing made by the Continental and Commercial Trust and Savings Bank, as Trustee hereunder, or its successor to the First National Bank in St. Louis, as Co-Trustee hereunder, or its successor, shall be sufficient warrant for such Co-Trustee, or its successor to take the action requested. The Co-Trustee may delegate to the Trustee the exercise of any power, discretionary or otherwise conferred upon the Co-Trustee by this indenture.

"Trustee."

"Co-Trustee."

SECTION 7. Whenever used in this indenture, the term "Trustee" means the Trustee for the time being under this indenture, whether original or successor, and the term "Co-Trustee" means the Co-Trustee for the time being under this indenture, whether original or successor.

Trustees represent holders of notes.

SECTION 8. In any proceeding brought by the Trustees (or either of them) hereunder the Trustees (or either of them) shall be held to represent all of the holders of the notes then

outstanding, and it shall not be necessary to make such note holders parties to any such proceeding.

ARTICLE X.

INTERPRETATION AND SUNDRY PROVISIONS.

Effect of illegality of any provision of notes or indenture.

SECTION 1. In event that any one or more of the provisions of this indenture, or of the notes or coupons secured hereby shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this indenture or of said notes and coupons, but this indenture and said notes and coupons shall be construed and enforced as if such illegal or invalid provision or provisions had never been contained therein.

Indenture binding on successors of Promisors.

SECTION 2. All the covenants, stipulations, promises and agreements in this indenture contained by or on behalf of the Promisors shall bind their successors and assigns whether so expressed or not.

Execution of indenture in counterparts.

SECTION 3. This indenture is executed in five counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

Testimonium.

IN WITNESS WHEREOF, Wallace D. Simmons, Levi L. Rue and Edward H. Simmons as the present acting and qualified trustees under said Agreement and Declaration of Trust, dated as of April 26, 1920, and as parties hereto of the first part, have hereunto affixed their names and seals and said Continental and Commercial Trust and Savings Bank and said First National Bank in St. Louis, parties of the second part to evidence their acceptance of the trusts hereby created, have caused this indenture to be signed by their respective corporate officers thereunto duly authorized and their respective

corporate seals to be hereunto affixed as of the day and year first above written.

Wallace D. Simmons (seal) **Promisors.**
Levi L. Rue (seal)
Edward H. Simmons (seal)
As Trustees under the Agreement and Declaration of Trust dated as of April 26, 1920, *creating the trust therein called the Associated Simmons Hardware Companies, and not individually.*

Continental and Commercial Trust and Savings Bank, **Trustee.**
By Louis B. Clarke,
Vice President.
(corporate seal)
Attest:
W. P. Kopf,
Secretary.

First National Bank in St. Louis, **Co-Trustee.**
By W. W. Smith,
Vice President.
(corporate seal)
Attest:
L. Allen,
Cashier.

Acknowledgment of Wallace D. Simmons.

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF SUFFOLK } ss.

On this first day of May, 1920, before me personally appeared Wallace D. Simmons, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this first day of May, 1920.

My commission expires Dec. 20, 1923.

CHARLES O. PENGRA,
Notary Public in and for the County and State Aforesaid.

(NOTARIAL SEAL)

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF SUFFOLK } ss.

Acknowledgment of Edward H. Simmons.

On this first day of May, 1920, before me personally appeared Edward H. Simmons, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this first day of May, 1920.

My commission expires Dec. 20, 1923.

CHARLES O. PENGRA,
Notary Public in and for the County and State Aforesaid.

(NOTARIAL SEAL)

Acknowledgment of Levi L. Rue.

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF SUFFOLK } ss.

On this first day of May, 1920, before me personally appeared Levi L. Rue, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal this first day of May, 1920.

My commission expires Dec. 20, 1923.

CHARLES O. PENGRA,
Notary Public in and for the County and State Aforesaid.

(NOTARIAL SEAL)

STATE OF ILLINOIS } ss.
COUNTY OF COOK }

Acknowledgment of Trustee.

On this 7th day of May, 1920, before me appeared Louis B. Clarke to me known, who being by me duly sworn, did say that he is the Vice President of Continental and Commercial Trust and Savings Bank, one of the corporations which executed the above and foregoing indenture, and that the seal attached to said instrument is the corporate seal of said corporation and that instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and said Louis B. Clarke acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 7th day of May, 1920.

My commission expires Nov. 30, 1921.

E. H. GUNDAKER,

(NOTARIAL SEAL) *Notary Public in and for the County and State Aforesaid.*

Acknowledgment of Co-Trustee.

STATE OF MISSOURI }
CITY OF ST. LOUIS } ss.

On this 8th day of May, 1920, before me appeared W. W. Smith to me known, who being by me duly sworn, did say that he is the Vice President of First National Bank in St. Louis, one of the corporations which executed the above and foregoing indenture, and that the seal attached to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and said W. W. Smith acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 8th day of May, 1920.

My commission expires February 6th, 1923.

A. F. BRANNIGAN,
Notary Public in and for the City and State Aforesaid.

(NOTARIAL SEAL)

[$3,750 U. S. Internal Revenue Stamps affixed to original executed indenture and canceled.]

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